PLLRC 23-2

PB195186

REVENUE SHARING AND PAYMENTS IN LIEU OF TAXES ON THE PUBLIC LANDS

Volume II

Appendices 1 and 2

EBS Management Consultants Incorporated
Washington, D.C.

July 1968

(Republished with revisions November 1970)

Reproduced by
NATIONAL TECHNICAL
INFORMATION SERVICE
Springfield, Va. 22151

Prepared under contract with the Public Land Law Review Commission.

The opinions, findings, conclusions and data expressed in this publication are those of the authors and not necessarily those of the Public Land Law Review Commission.

This publication constitutes only one of a number of sources of information utilized by the Commission in the conduct of its public land study program.

title p-302

STANDARD TITLE PAGE FOR TECHNICAL REPORTS

1. Report No. PLLRC-23-2

2. Govt. Accession No.

3. Recipient's Catalog No.

4. Title and Subtitle
Revenue Sharing and Payments in Lieu of Taxes on the Public Lands. Volume II. Appendices 1 and 2

5. Report Date 11/70

6. Performing Organization Code

7. Author(s) EBS Management Consultants

8. Performing Organization Rept. No. 23

9. Performing Organization Name and Address
Public Land Law Review Commission
1730 K St., N.W.
Washington, D.C. 20006

10. Project/Task/Work Unit No.

11. Contract/Grant No.

12. Sponsoring Agency Name and Address
same as 9 above

13. Type of Report & Period Covered interim

14. Sponsoring Agency Code

15. Supplementary Notes

16. Abstracts

The second volume in a four-volume study which analyzes 40 different Federal statutes providing for compensation to states and/or local governmental units through either revenue sharing or in lieu tax payments. Revenue sharing ranges from 5 to 90 percent of the receipts received. Also included are analyses of laws dealing with state-owned lands, as well as those of Canada and Australia. Intensive examination was also made of 5 states and 50 counties in 19 states to assess the impact of Federal land ownership. (PLLRC abstract)

17. Key Words and Document Analysis. 17a. Descriptors

revenue sharing, payments in lieu of taxes

17b. Identifiers/Open-Ended Terms

17c. COSATI Field/Group

18. Distribution Statement
available through NTIS

19. Security Class (This Report) UNCLASSIFIED

20. Security Class (This Page UNCLASSIFIED

21. No. of Pages ~~342~~ 302

22. Price

Appendix No. 1

Introduction

This appendix consists of three parts.

Part I contains digests of each of the Federal statutes providing for revenue sharing or payments in lieu of taxes to State and/or local governments. The digests contain the text of the applicable law, extracts from the relevant portions of the legislative history of the statute and a general description and analysis of the administration of the statute.1/

Part II is a narrative description and analysis of laws of the 50 States providing financial compensation to local governments with respect to State owned lands. The description is supplemented by a figure detailing the provisions of all of the State laws known to exist in this area. Finally, the description contains where apposite a comparison of the Federal and State laws.2/

Part III consists of a summary narrative description of the laws of Australia and Canada providing for revenue sharing and/or payments in lieu of taxes on publicly held land in those countries.3/

1/ Paginated as LA - LAD.

2/ Paginated as LAE.

3/ Paginated as LAF.

Appendix No. 1

I. Digests of Federal Statutes Providing for Revenue Sharing or Payments in Lieu of Taxes to be made with Respect to Federally Owned Lands.

Digest No.	Description of Statute
LA	Sale of Public Lands
LB	National Forests Revenue Act
LC	Arizona and New Mexico Enabling Act
LD	Revested Oregon and California Railroad Grant Lands
LE	Reconveyed Coos Bay Wagon Road Grant Lands
LF	Mineral Leasing Act of 1920
LG	Federal Power Act
LH	Boulder Canyon Project
LI	Tennessee Valley Authority
LK	Taylor Grazing Act
LL	Columbia River Basin Project
LM	Bankhead Jones Farm Tenant Act
LN	Army Corps of Engineers
LO	Eleven Designated Watershed Projects (Rivers and Harbors Act)
LP	Atomic Energy Commission
LQ	Sale of Materials from Federal Lands
LR	Mineral Leasing Act of 1947
LS	Boundary Waters Canoe Area of Superior National Forest
LT	General Services Administration (Surplus Property)
LU	Grand Teton National Park
LV	Public Law 874 - Educational Impact Grants
LW	OCS Lands
LX	St. Lawrence Seaway Act
LY	Trinity River Basin Project
LZ	Property Formerly Belonging to Reconstruction Finance Corporation
LAA	Mineral Leasing on State Selected Indemnity Lands
LAB	Migratory Bird Conservation Act
LAC	Klamath Wildlife Refuge
LAD	Local Taxation of Real Property of Federal Monetary Agencies
LAE	State Laws
LAF	Australian and Canadian Laws

FEDERAL STATUTE DIGEST NO. LA

(Sharing of Proceeds Realized From Sale of Public Lands)

I. Background

The United States in its capacity as the nation's largest landholder is continuously both acquiring additional lands and disposing of others. From 1781 to 1867 the United States acquired some 1,800,000,000 acres of land, so-called public domain lands.[1] During the period from 1781 to 1966 the United States disposed of approximately 1,000,000,000 acres of land.[2] Today, including lands acquired since 1867, the Federal Government owns some 766,000,000 acres of land.[3]

Disposition of land by the Federal Government took the form of various grants of land to the States, to railroads, outright sales of land to private persons, and various other means. Beginning with the admission of Ohio into the Union in 1802, and thereafter with respect to most of the new States admitted to the Union, the Congress provided that a certain percentage[4] of the proceeds realized from the sale of public lands was to be returned to the States in which the lands sold were situated, to be used, generally speaking, for public schools and roads. Table I of this Digest summarizes the various restrictions on the uses to which the shared revenues may be put, as well as certain other conditions contained in the acts relating to the admission of new States into the Union. Most of the sales of public lands took place in the nineteenth century,[5] and sales of limited amounts of public land are currently made under various statutes.[6] The amounts of revenue accruing to the States from this source are extremely small.[7]

---

[1] For a breakdown of the acreage acquired, see Public Land Statistics 1966, p.4. See also Hibbard, Benjamin H., A History of the Public Land Policies, University of Wisconsin Press (Madison 1965) (Copyright 1924) pp. 7-31.

[2] Public Land Statistics 1966, p.6.

[3] Id. at 2.

[4] The usual percentage is 5%. In the case of Alaska, under special legislation enacted in 1964, the percentage is 90%. See text and note 29 infra.

[5] See Clawson and Held, The Federal Lands: Their Use and Management, University of Nebraska Press, Lincoln, Nebraska (Bison ed. 1957), pp. 22-27.

[6] See infra Section IIC of this Digest.

[7] For the fiscal year 1966 the total amount allocated to all States was $241,775; for fiscal 1965 the figures was $220,392. Public Land Statistics 1966, p.179. Receipts from this source include proceeds realized from the sale of materials from public lands. For a discussion of sale of materials from public lands and their distribution, see Digest LQ.

II. Provision for Payments and its Administration

A. Pertinent text of the statute

The statutory provisions providing for a sharing of the net proceeds realized from the sale of public lands are found in the various acts relating to the admission into the Union of the territories which subsequently became public land States.[8] These provisions are listed below by State in order of enactment:

Ohio, Act of April 30, 1802
2 Stat. 173, 175 (1802)

"Sec. 7. Third, That one-twentieth part of the net proceeds of the lands lying within the said state sold by Congress, from and after the thirtieth day of June next, after deducting all expenses incident to the same shall be applied to the laying out and making public roads leading from the navigable waters emptying into the Atlantic, to the Ohio, to the said state and through the same, such roads to be laid out under the authority of the Congress, with the consent of the several States through which the road shall pass: Provided always, That the three foregoing propositions herein offered are on the conditions that the convention

---

8/ The term "public lands" or "public domain lands" means:

"Original public domain lands which have never left Federal ownership; also, lands in Federal ownership which were obtained by the Government in exchange for public lands or for timber on public lands." (Public Land Statistics 1966, p.40)

The term "public land state" means a State in which the Federal Government owned a substantial portion of the real property within the State at the time of its admission into the Union. This term excludes the original thirteen States as well as those States created out of the original thirteen Colonies in which there never was any extensive Federal land ownership. For somewhat different reasons, Texas and Hawaii are also not considered as public land states.

Thus the non-public land states are: Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Delaware, Virginia, North Carolina, South Carolina, Georgia, Maine, Vermont, West Virginia, Kentucky, Tennessee, Texas and Hawaii. The United States owned no land in the Republic of Texas prior to its incorporation into the Union. In Hawaii, land has been owned either by the state or private individuals since statehood.

For a general discussion of this area, see Hibbard, supra note 1, pp. 7-32. For a general discussion of Hawaii's status, see, Hawaii University Legislative Reference Bureau Reports, "Public Land Policies of the United States and Mainland States" by Charles S. James, Honolulu, 1961: University of Hawaii Press, Rep. No. 5, p. 67.

"of the said state shall provide, by an ordinance irrevocable without the consent of the United States, that every and each tract of land sold by Congress from and after the thirtieth day of June next, shall be and remain exempt from any tax laid by order or under authority of the state, whether for state, county, township, or any other purpose whatever, for the term of five years from and after the day of sale."

Amended by Act of March 3, 1803
2 Stat. 225, 226 (1803)

"Sec. 2. And be it further enacted, That the Secretary of the Treasury shall, from time to time, and whenever the quarterly accounts of the receivers of public monies of the several land-offices shall be settled, pay three per cent. of the net proceeds of the lands of the United States, lying within the state of Ohio, which since the ninteenth day of June last have been, or hereafter may be sold by the United States, after deducting all expenses incidental to the same, to such person or persons as may be authorized by the legislature of the said state to receive the same, which sums thus paid, shall be applied to the laying out, opening and making roads within the said state, and to no other purpose whatever; and an annual account of the application of the same shall be transmitted to the Secretary of the Treasury, by such officer of the state as the legislature thereof shall direct; and it is hereby declared, that the payments thus to be made, as well as the several appropriations for schools made by the preceding section, are in conformity with, and in consideration of the conditions agreed on by the state of Ohio, by the ordinance of the convention of the said state, bearing date the twenty-ninth day of November last."

Louisiana, Act of February 20, 1811
2 Stat. 641, 642, 643 (1811)

"Sec. 3...And provided also, That the said convention shall provide by an ordinance, irrevocable without the consent of the United States, that the people inhabiting the said territory do agree and declare that they forever disclaim all right or title to the waste or unappropriated lands lying within the said territory; and that the same shall be and remain at the sole and entire disposition of the United States; and, moreover, that each and every tract of land sold by Congress shall be and remain exempt from any tax laid by the order or under the authority of the State, whether for state, county, township, parish, or any other purpose whatever, for the term of five years from and after the respective "days of the sales thereof; and that the lands belonging to citizens of the United States residing without the said State shall never be taxed higher than the lands belonging to persons residing therein; and that no taxes shall be imposed on lands the property of the United States; and that the river Mississippi and the navigable rivers and waters leading into the same or into the Gulf of Mexico shall be common highways and forever free, as well to the inhabitants of the said state as to other citizens of the United States, without any tax, duty, impost, or toll therefor imposed by the state.

"Sec. 5. And be it further enacted, That five per centum of the net proceeds of the sales of the lands of the United States, after the first day of January, shall be applied to laying out and constructing public roads and levees in the said State, as the legislature thereof may direct...."

Indiana, Act of April 19, 1816
3 Stat. 289, 290, 291 (1816)

"Sec. 6. Third. That five per cent. of the net proceeds of the lands lying within the said territory, and which shall be sold by Congress from and after the first day of December next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals, of which three-fifths shall be applied to those objects within the said state, under the direction of the legislature thereof, and two-fifths to the making of a road or roads leading to the said State, under the direction of Congress....

"Fifth...And provided always, That the five foregoing provisions herein offered are on the conditions that the convention of the said state shall provide, by an ordinance irrevocable without the consent of the United States from and after the first day of December next shall be and remain exempt from any tax laid by order or under any authority of the state, whether for state, county, or township, or any other purpose whatever, for the term of five years from and after day of sale."

Mississippi, Act of March 1, 1817
3 Stat. 348, 349 (1817)

"Sec. 5. And be it further enacted, That five per cent. of "the net proceeds of the lands lying within the said Territory, and which shall be sold by Congress from and after the first day of December next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals of which three-fifths shall be applied to those objects within the said state under the direction of the legislature thereof, and two-fifths to the making of a road or roads leading to the said State, under the direction of Congress.

"Sec. 4...And provided also, That the said convention shall provide, by an ordinance irrevocable without the consent of the United States, that the people inhabiting the said Territory do agree and declare that they forever disclaim all right or title to the waste or unappropriated lands lying within the said territory, and that the same shall be and remain at the sole and entire disposition of the United States; and, moreover, that each and every tract of land sold by Congress shall be and remain exempt from any tax laid by the order, or under the authority, of the state, whether for state, county, township, parish, or any other purpose whatever, for the term of five years from and after the respective days of the sales thereof, and that the lands belonging to citizens of the United States residing without the said State shall never be taxed higher than the lands belonging to persons residing therein; and that no taxes shall be imposed on lands the property of the United States, and that the river Mississippi, and the navigable rivers and waters leading into the same, or into the Gulf of Mexico, shall be common highways, and forever free, as well to the inhabitants of the said state as to other citizens of the United States, without any tax, duty, impost or toll therefor imposed by the said state."

Illinois, Act of April 18, 1818
3 Stat. 428, 430, 431 (1818)

"Sec. 6. Third. That five per cent. of the net proceeds of the lands lying within such State, and which shall be sold by Congress from and after the first day of January, one thousand eight hundred and nineteen, after deducting all expenses incident to the same, shall be reserved for the purposes following, viz: Two-fifths to be disbursed, under the direction of Congress, in making roads leading to the state, the residue to be appropriated by the legislature of the state for the encouragement of learning, of which one-sixth part shall be exclusively bestowed on a college or university.

"Fourth. ...Providing always, That the four foregoing propositions herein offered are on the conditions that the convention of the said State shall provide, by an ordinance irrevocable without the consent of the United States, that every and each tract of land sold by the United States from and after the first day of January, one thousand eight hundred and nineteen, shall remain exempt from any tax laid by order or under any authority of the state, whether for state, county, or township, or any other purpose whatever, for the term of five years from and after the day of sale: And further, That the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees or their heirs, remain exempt, as aforesaid, from all taxes for the term of three years from and after the date of the patents, respectively; and that all the lands belonging to the citizens of the United States residing without the said state shall never be taxed higher than lands belonging to persons residing therein."

Alabama, Act of March 2, 1819
3 Stat. 489, 491, 492 (1819)

"Sec. 6. Third. That five per cent. of the net proceeds of the lands lying within the said Territory, and which shall be sold by Congress from and after the first day of September, in the year one thousand eight hundred and nineteen, after deducting all expenses incident to the same, shall be reserved for making public roads, canals, and improving the navigation of rivers, of which three-fifths shall be applied to those objects within the said state, under the direction of the legislature thereof, and two-fifths to the making of a road or roads leading to the said state, under the direction of Congress.

"Fourth. ...And provided, always, That the said convention shall provide by an ordinance, irrevocable without the consent of the United States, that the people inhabiting the said territory do agree and declare that they forever disclaim all right and title to the waste or unappropriated lands lying within the said Territory, and that the same shall be and remain at the sole and entire disposition of the United States; and, moreover, that each and every tract of land sold by the United States after the first day of September, in the year one thousand eight hundred and nineteen, shall be and remain exempt from any tax laid by the order or under the authority of the state, county, township, parish, or any other purpose "whatever, for the term of five years from and after the respective days of the sales thereof; and that the lands belonging to citizens of the United States residing without the said State shall never be taxed higher than the lands belonging to persons residing therein; and that no tax shall be imposed on lands the property of the United States; and that all navigable waters within the said state shall forever remain public highways, free to all citizens of said state and of the United States, without any tax, duty, impost, or toll therefor imposed by the said state."

Missouri, Act of March 6, 1820
3 Stat. 545, 547 (1820)

"Sec. 6. Third. That five per cent. of the net proceeds of the sale of land lying within the said territory or state, and which shall be sold by Congress from and after the first day of January next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals, of which three-fifths shall be applied to those objects within the state, under the direction of the legislature thereof, and the other two-fifths in defraying, under the direction of Congress, the expenses to be incurred in making of a road or roads, canal or canals leading to the said state....

"Fifth. ...Provided, That the five foregoing propositions herein offered are on the condition that the convention of the said state shall provide by an ordinance, irrevocable without the consent of the United States, that every and each tract of land sold by the United States from and after the first day of January next shall remain exempt from any tax laid by order or under the authority of the state, whether for state, county, or township, or any other purpose whatever, for the term of five years from and after the day of sale: And further, That the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees, or their heirs, remain exempt as aforesaid from taxation for the term of three years from and after the date of the patents respectively."

Arkansas, Act of June 23, 1836
5 Stat. 58, 60 (1836)

"Third. That five per cent of the nett proceeds of the "sale of lands lying within said State, and which shall be sold by Congress from and after the first day of July next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals within the said State, under the direction of the General Assembly thereof.

"Fifth. ...Provided, That the five foregoing propositions herein offered are on the condition that the general assembly or legislature of the said State, by virtue of the powers conferred upon it by the convention which framed the constitution of said State, shall provide, by an ordinance irrevocable without the consent of the United States, that the said General Assembly of said State shall never interfere with the primary disposal of the soil within the same by the United States, nor with any regulation Congress may find necessary for securing the title of such soil to the bona fide purchasers thereof; and that no tax shall be imposed on lands the property of the United States, and that in no case shall non-resident proprietors be taxed higher than residents; and that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, whilst they continue to be held by the patentees or their heirs, remain exempt from any tax laid by order or under the authority of the State, county, township, or any other purpose, for the term of three years from and after the date of the patents respectively."

Michigan, Act of June 23, 1836
5 Stat. 59, 60 (1836)

"Fifth. That five per cent. of the net proceeds of the sales of all public lands lying within the said State which have been or shall be sold by Congress from and after the first day of July, eighteen hundred and thirty-six, after deducting all the expenses incident to the same, shall be appropriated for making public roads and canals within the said State, as the legislature may direct. Provided, That the five foregoing propositions herein offered are on the condition that the legislature of the said State, by virtue of the powers conferred upon it by the convention which framed the constitution of the said State, shall provide, by an ordinance irrevocable without the consent of the United States, that the said State shall never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations Congress may find necessary for securing the title in such soil to the bona fide purchasers thereof;

"and that no tax shall be imposed on lands the property of the United States, and that in no case shall nonresident proprietors be taxed higher than residents; and that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, whilst they continue to be held by the patentees or their heirs, remain exempt from any tax laid by order or under the authority of the State, whether for State, county, township, or any other purpose, for the term of three years from and after the date of the patents respectively."

Iowa and Florida, Act of March 3, 1845
5 Stat. 789, 790 (1845)

"Fifth. That five per cent. of the net proceeds of sales of all public lands lying within the said State which have been or shall be sold by Congress from and after the admission of said State, after deducting all the expenses incident to the same, shall be appropriated for making public roads and canals within the said State, as the legislature may direct: Provided, That the five foregoing propositions herein offered are on the condition that the legislature of the said State, by virtue of the powers conferred upon it by the convention which framed the constitution of the said State, shall provide, by an ordinance irrevocable without the consent of the United States, that the said State shall never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations Congress may find necessary for securing the title in such soil to the bona fide purchasers thereof; and that no tax shall be imposed on lands the property of the United States; and that in no case shall nonresident proprietors be taxed higher than residents; and that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees or their heirs, remain exempt from any tax laid by order or under the authority of the State, whether for State, county, township, or any other purpose, for the term of three years from and after the date of the patents respectively."

Wisconsin, Act of August 6, 1846
9 Stat. 56, 58 (1846)

"Fifth. That five per cent. of the net proceeds of "sale of all public lands lying within the said State which have been or shall be sold by Congress from and after the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to the said State for the purpose of making public roads and canals in the same, as the legislature shall direct: Provided, That the foregoing propositions herein offered are on the conditions that the said convention which shall form the constitution of said State shall provide, by a clause in said constitution, or an ordinance, irrevocable without the consent of the United States, that said State shall never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations Congress may find necessary for securing the title in such soil to bona fide purchasers thereof: and that no tax shall be imposed on lands the property of the United States; and that in no case shall nonresident proprietors be taxed higher than residents."

Amended by Act of March 3, 1847
9 Stat. 178, 179 (1847)

"Sec. 3. And be it further enacted, That the assent of Congress is hereby given to the resolutions adopted by said convention and appended to said constitution, and the acts of Congress referred to in said resolutions are hereby amended so that the lands thereby and the proceeds thereof, and the five per centum of the net proceeds of the public lands, may be held and disposed of by said State, in the manner and for the purposes recommended by said convention."

Minnesota, Act of February 26, 1857
11 Stat. 166, 167 (1857)

"Sec. 5. Fifth. That five per centum of the net proceeds of sales of all public lands lying within said State, which shall be sold by Congress after the admission of the said State into the Union, after deducting all the expenses incident to the same, shall be paid to said State for the purpose of making public roads and internal improvements, as the legislature shall direct. Provided, The foregoing propositions herein offered are on the condition that the said convention which shall form the constitution of said State shall provide, by a clause in said constitution, or an ordinance, irrevocable without the consent of the United States, that said State shall never interfere with "the primary disposal of the soil within the same by the United States, or with any regulations Congress may find necessary for securing the title in said soil to bona fide purchasers thereof; and that no tax shall be imposed on lands belonging to the United States; and that in no case shall nonresident proprietors be taxed higher than residents."

Oregon, Act of February 14, 1859
11 Stat. 383, 384 (1859)

"Sec. 4. Fifth. That five per centum of the net proceeds of sales of all public lands lying within said State which shall be sold by Congress after the admission of said State into the Union, after deducting all expenses incident to the same, shall be paid to said State for the purpose of making public roads and internal improvements, as the legislature shall direct; Provided, That the foregoing propositions hereinbefore offered are on the condition that the people of Oregon shall provide, by an ordinance irrevocable without the consent of the United States, that said State shall never interfere with the primary disposal of the soil within the same by the United States, or with any regulations Congress may find necessary for securing the title in said soil to bona fide purchasers thereof; and that in no case shall nonresident proprietors be taxed higher than residents.

"Sixth. And that the said State shall never tax the lands or the property of the United States in said State."

Kansas, Act of January 29, 1861
12 Stat. 126, 127,128 (1861)

"Sec. 3. Fifth. That five per centum of the net proceeds of sales of all public lands lying within said State which shall be sold by Congress after the admission of said State into the Union, after deducting all expenses incident to the same, shall be paid to said State for the purpose of making public roads and internal improvements, or for other purposes, as the legislature may direct: Provided, That the foregoing propositions hereinbefore offered are on the condition that the people of Kansas shall provide, by an ordinance irrevocable without the consent of the United States, that said State shall never interfere with the primary disposal of the soil within the same by the United States, or with any regulations Congress may find necessary for securing the title in said soil to bona fide purchasers thereof.

"Sixth. And that the said State shall never tax the lands or the property of the United States in said State...."

Nevada, Act of March 21, 1864
13 Stat. 30, 31, 32 (1864)

"Sec. 4. Third. That the people inhabiting said Territory do agree and declare that they forever disclaim all the right and title to the unappropriated public lands lying within said Territory, and that the same shall be and remain at the sole and entire disposition of the United States: and that the lands belonging to citizens of the United States residing without the said State shall never be taxed higher than the land belonging to the residents thereof; and that no taxes shall be imposed by said State on lands or property therein belonging to or which may hereafter be purchased by the United States.
"Sec. 10. And be it further enacted, That five per centum of the proceeds of the sales of all public lands lying within said State which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to the said State for the purpose of making and improving public roads, constructing ditches or canals, to effect a general system of irrigation of the agricultural land in the State, as the legislature shall direct."

Colorado, Act of March 21, 1864
13 Stat. 32, 34, 35 (1864)

"Sec. 10. Be it further enacted, That five per centum of the proceeds of the sales of all public lands lying within said State which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all expenses incident to the same, shall be paid to the said State for the purpose of making and improving public roads, constructing ditches or canals, to effect a general system of irrigation of the agricultural land of the State, as the legislature shall direct.
"Sec. 4. Third. That the people inhabiting said Territory do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said Territory, and that the same shall be and remain at the sole and entire disposition of the United States, and that the land belonging to citizens of the United States residing without the said State shall never be taxed higher

"than the land belonging to residents thereof; and that no taxes shall be imposed by said State on lands or property therein belonging to or which may hereafter be purchased by the United States."

Nebraska, Act of April 19, 1864
13 Stat. 47, 48, 49 (1864)

"Sec. 4. Third. That the people inhabiting said Territory do agree and declare that they forever disclaim all right and title to the unappropriated public roads lying within said Territory, and that the same shall be and remain at the sole and entire disposition of the United States, and that the lands belonging to citizens of the United States residing without the said State shall never be taxed higher than the lands belonging to residents thereof; and that no taxes shall be imposed by said State on lands or property therein belonging to or which may hereafter be purchased by the United States.
"Sec. 12. And be it further enacted, That five per centum of the proceeds of the sales of all public lands lying within said State which have been or shall be sold by the United States prior or subsequent to the admission of said State into the Union, after deducting all expenses incident to the same, shall be paid to the said State for the support of common schools."

North Dakota, South Dakota, Montana, and Washington, Act of February 22, 1889
25 Stat. 676, 680 (1889)

"Sec. 13. That five per centum of the proceeds of the sales of public lands lying within said States which shall be sold by the United States subsequent to the admission of said States into the Union, after deducting all the expenses incident to the same, shall be paid to the said States, to be used as a permanent fund, the interest of which only shall be expended for the support of common schools within said States, respectively."

Idaho, Act of July 3, 1890
26 Stat. 215 (1890)

"Sec. 7. That five per centum of the proceeds of the sales of public lands lying within said State which shall be sold by the United States subsequent to the admission "of said State into the Union, after deducting all the expenses incident to the same, shall be paid to the said State, to be used as a permanent fund, the interest of which only shall be expended for the support of common schools within said State."

Wyoming, Act of July 10, 1890
26 Stat. 222, 223 (1890)

"Sec. 7. That five per centum of the proceeds of the sales of public lands lying within said State which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to the said State, to be used as a permanent fund, the interest of which only shall be expended for the support of common schools within said State."

Oklahoma, Act of June 16, 1906
34 Stat. 267, 274 (1906)

"Sec. 11. That an amount equal to five per centum of the proceeds of the sales of public lands lying within said State shall be paid to the said State, to be used as a permanent fund, the interest only of which shall be expended for the support of the common schools within said State."

California, Act of June 27, 1906
34 Stat. 518 (1906)

"That there be, and is hereby, granted to the State of California five per centum of the net proceeds of the cash sales of public lands which have been heretofore made by the United States since the admission of said State, or may hereafter be made in said State, to aid in the support of the public or common schools of said State; and the sum of money necessary to pay said five per centum to said State is hereby appropriated out of any money in the Treasury not otherwise appropriated."

Arizona and New Mexico, Act of June 20, 1910
36 Stat. 557, 563, 574 (1910)

New Mexico
"Sec. 9. That five per centum of the proceeds of sales

"of public lands lying within said State, which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to such sales, shall be paid to the said State to be used as a permanent inviolable fund, the interest of which only shall be expended for the support of the common schools within said State."

Arizona
"Sec. 27. That five per centum of the proceeds of sales of public lands lying within said State which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to such sales, shall be paid to the said State to be used as a permanent inviolable fund, the interest of which only shall be expended for the support of the common schools within said State."

Alaska, Act of July 7, 1958
72 Stat. 339, 341 (1958)

"Sec. 6 (f). Five per centum of the proceeds of sale of public lands lying within said State which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to such sales shall be paid to said State to be used for the support of the public schools within said State."

B. Congressional rationale for payments

The debates, reports and such hearings as were held on the statutes providing for the admission of new States into the Union shed no light on the rationale of the revenue sharing sections of the early statutes. However, from later Congressional discussions and from commentators on the area, the rationale seems clear. The new States and the United States entered into what they considered a compact with each party furnishing due consideration. The United States offered, inter alia, to share, with the States, a percentage of the net proceeds from the sale of public lands in exchange for the inclusion of certain clauses within the States' Constitutions.[9]

Evidence of Congressional belief that the statutes providing for admission of new States into the Union were a compact between the States admitted to the Union and the United States is found in an 1821 report of the Senate Committee on Public Lands commenting on a petition by the State of Indiana requesting that public lands be subject to State taxation immediately after their sale:

> "The Committee beg leave to remark that the provision in the act of Congress providing for the Admission of Indiana into the Union, ['] that lands sold subsequent to the first day of December, 1816, should be exempt from taxation for five years from the day of sale', was not (as the memorialists suppose) imposed on this State by Congress as a restriction, but was, in fact, a compact entered into between Congress, on behalf of the people of the United States, and the convention in behalf of the people of Indiana, by which Congress granted to the State a full and adequate equivalent for the exemption. The United States, by that law, offered to the convention 'for their free acceptance or rejection', section No. 16 in every township, for the use of schools, all the salt springs in the State, with the lands necessary for working them, for the use of the State, three per cent of the net proceeds of the sales of public lands for the purpose of making roads and canals within the State; one entire township 'for the use of a seminary of learning';

---

[9] E.g., a guarantee that Federal lands be granted tax exempt status. More specifically, the acts provided that (1) Federal real estate not be taxed; (2) public lands be tax-exempt for five years after their sale; (3) that the lands used to pay military bounties from the War of 1812 be tax exempt for three years; (4) the State not interfere with the sale of public lands; and (5) the State not discriminate against non-resident landowners. See Table I for a summary of these provisions.

> "and four sections of land for the seat of Government; and the only consideration desired for these important grants, was the exemption from taxation which the memorialists wish to have abolished."[10]

The Senate Committee on Public Lands reaffirmed its early descriptions of the revenue sharing "contract" rationale a few years later. In an 1832 report on a bill which proposed that all net proceeds from the sale of public lands be distributed among the States, the Committee noted:

> "In one particular the bill possesses a feature which, detached from the rest, might indemnify, in a slight degree, the new States for the loss they have incurred in giving up the right of taxing the federal lands for the inadequate consideration of 5 per cent upon the proceeds of the sales."[11]

That the revenue sharing provision was regarded by Congress as part of the consideration granted to newly admitted States in return for certain concessions made by States, may again be seen in the 1850 Congressional debates relating to the conditions of admission of California. During the debates Senator Douglas reviewed the history of prior acts admitting States into the Union. In speaking of the earliest statute admitting Ohio he said:

---

[10] 3 PUBLIC LANDS 492 (30 American State Papers, 1815-1824, No. 332). The guarantee that public lands be tax exempt for five years after their sale to the public was originally part of the credit system for public land purchases used in the early nineteenth century. Purchasers were given four years to pay for the land. Congress felt that these lands should not be taxed since, if the purchaser failed to pay State taxes, the State might foreclose a tax lien and the purchaser default in further payments to the United States for the land. This would mean that the State would have title to the land and the United States not have been fully paid for its lands. Hibbard, supra note 1 at 84.

[11] 6 PUBLIC LANDS 486 (33 American State Papers, 1829-1834, No. 1064).

> "...If she [Ohio] accepted the propositions, she became entitled to the school lands, the salt springs, and five per cent of the net proceeds of the sales of public lands. But if she rejected them, she lost all these donations; still remaining, however, a member of the Confederacy. These provisions for a compact, therefore, were not tendered as conditions to her admission into the Union, but as the only terms upon which she would receive the donations of land and money.
>
> "What are the conditions? Not that the State will never interfere with the primary disposal of the soil -- not that she will disclaim all right to the public lands within her limits -- not that she will never tax the lands and property of the United States: none of these subjects are mentioned or alluded to. It seems to have been taken for granted that none of these things were necessary. But it was deemed necessary to stipulate that every such tract of land sold by Congress should remain exempt from taxation for the term of five years from and after the day of sale. Congress deemed this stipulation important, and hence it was inserted as the condition upon which the State could receive her school lands and other gratuities... But for this provision the lands would have been taxable from the day of sale, and, in default of the payment of the taxes, the State might have sold them and secured tax titles to them before the United States would have received the purchase money...."11a/

11a/ Cong. Globe App., 31st Cong., 1st Sess. 849 (1850).

The best summary of Congressional rationale for the initial revenue sharing provisions came when California petitioned Congress for five per cent of the net proceeds from the sale of public land within the State.[12] The excerpt below from the Senate report on the legislation which retroactively granted California five per cent of the net proceeds from the sale of public lands in that State, summarizes the provisions of the earlier statutes providing for the admission of States into the Union, and expresses the feeling that, since California had given the same concessions that qualified the other public land states for revenue sharing, it should be treated in the same way.

> "The consideration for the grant of this 5 per cent ever heretofore made by Congress to the other public-land States from April 30 1802, the date of the first grant thereof in the enabling act to admit the first public-land State, Ohio (2 U.S. Stat., 175) to July 16, 1894 the date of the last enabling act making a similar grant to admit the last public-land State, Utah (28 U.S. Stat, 107), into the Union, has ever been certain concessions or conditions exacted by Congress from each of the said public-land States, and by them duly surrendered to the United States, as recited in the several enabling acts passed by Congress to enable them respectively to be subsequently admitted into the Union."[13]
>
> "Upon the admission of the various public-land States to the Union the enabling acts have provided for the reservation of 5 per cent of the net proceeds of the sales of public lands within each State for the benefit of the State. Each State has stipulated in return either the exemption of the public lands from tax, the exemption for a certain period from tax of lands granted for military services, the equality of non-resident with resident landowner, or some other like covenant."[14]
>
> "The State of California requires special consideration. It will be remembered that the usual enabling act was not passed in regard to California. The people of California organized their own State without previous authority from Congress, and Congress on September 9, 1850 (9 Stat. L., 453), passed an act admitting the State under the Constitution presented by the people. Thus the grants found in the other acts failed to be specifically made to California, and this State alone in the Union had never received 5 per cent upon the cash sales of public lands. It can not be questioned that California, having in her admission surrendered to the United States the same consideration for which the other States received the 5 per cent grant should be placed on the same basis as the other states."[15]

---

[12] The act admitting California into the Union (9 Stat. 452 (1850)) did not contain a revenue sharing provision for the reasons explained below in the excerpt accompanying footnote 15.

[13] H.R. Rep. No. 1602, 53d Cong., 3d Sess. 1 (1895).

[14] S. Rep. No. 1380, 56th Cong., 1st Sess. 1-2 (1900).

[15] Id. at 11.

C. Administration

Sales of public land to private persons and others are administered by the Bureau of Land Management of the Department of the Interior ("BLM"). Authority to sell different types of land is contained in several titles of the United States Code. Land is sold either at public auction at not less than its appraised value, or is disposed of under special provisions of law specifying the price, amount of land to be sold, and the conditions of sale. The major statutes under which public land is sold are described briefly below.[16]

1. Isolated tracts. Under the authority of this statute[17] "any isolated or disconnected tract or parcel of the public domain" not exceeding 1,520 acres may be sold at "not less than its appraised value." The land must be classified as suitable for disposal and be sold at public auction. Certain preference rights are given to adjoining land owners, but the sale even to them, cannot be at less than the appraised value.

This statute also provides for the sale of "legal subdivisions of the public land" not exceeding 760 acres, whether or not such land is isolated and disconnected. Such lands also are sold at not less than their appraised value, but only to persons owning land or having entry to lands adjoining the tract to be sold.

2. Small tracts. Sales (or leases) are also authorized for tracts of land not exceeding five acres of land.[18] These lands are mostly Taylor Grazing Act lands, or lands which may be classified as suitable for commercial or residential purposes. The sale may not be made if it would interfere with grazing purposes or impair the protection of watersheds. The statute provides that such lands may not be sold "for less than the cost of making any survey necessary to describe properly the land sold".[19]

3. Alaska public land sales. Sales of public lands in Alaska not exceeding 160 acres may be sold for not "less than the appraised price of the land and the cost of making any survey to properly describe the land sold".[20] Such lands may be sold only if they have been classified as "suitable for industrial or commercial purposes including the construction of housing".[20a] Sales are at public

---

[16] A breakdown of land sales by category may be found in Public Land Statistics 1966, pp. 46-49.

[17] 43 U.S.C. § 1171 (1964).

[18] 43 U.S.C. § 682a (1964).

[19] 43 U.S.C. § 682b (1964).

[20] 48 U.S.C. §§ 364a,b (1964).

[20a] Ibid.

auction, and the successful bidder must furnish proof that he has the intention and the means to develop the tract for the purposes specified.

4. Temporary authority to sell land. Public lands not in excess of 5,120 acres may be sold at not less "than the appraised fair market value" of such lands, if such lands have been classified for disposal in accordance with a determination that (a) the lands are required for the orderly growth and development of a community, or (b) the lands are chiefly valuable for residential, commercial, agricultural, industrial or public uses or development.[21] The lands must be sold at competitive bidding. This legislation is temporary, expiring on December 31, 1970.

5. Sales for public or recreational purposes. Public lands may be sold to a State, county, municipality, etc., or to a non-profit organization for public or recreational purposes.[22] Sales to States may not exceed 6,400 acres; those made to political subdivisions of States and non-profit organizations may not exceed 640 acres. The price at which these lands may be sold may be fixed by the Secretary of the Interior, taking into consideration the purposes for which the land is sold. If the lands are not used for the public purposes specified, they revert to the United States.

6. Patents for mineral lands. Under certain circumstances, and providing certain conditions are met relating to claim identification and minimum work requirements, the United States is required to deed (patent) mineral bearing lands to which private persons have established valid claims. In addition, the price per acre which must be paid for the land is fixed by statute at either five dollars or two dollars and fifty cents, plus costs, depending whether the claims are lode claims or placer claims.[23] Patents will not be issued with respect to lands withdrawn from entry,[24] and not all minerals are subject to sale.[25]

---

[21] 43 U.S.C. § 1421 (1964).
[22] 43 U.S.C. § 869a (1964).
[23] 30 U.S.C. § 37 (1964).
[24] 43 U.S.C. § 141 (1964) (Authority to withdraw lands from Sale).
[25] 30 U.S.C. § 181 (1964) (Mineral Leasing Act of 1920). See generally 43 C.F.R. § 3400.1 (1967) for lands subject to location and purchase. Mineral bearing acquired lands are not subject to purchase, but leasing rights are granted to such lands.

7. Town lots. Where cities or towns have been founded on public lands, lots embraced within the town may be sold at not less than ten dollars per lot to the highest bidder. The maximum acreage per town site is six hundred and forty acres.[26]

8. Desert land entries. Tracts of desert lands not exceeding three hundred and twenty acres are sold at one dollar and twenty-five cents an acre, provided the purchaser within three years reclaims the land through irrigation.[27]

9. Homesteads. Vacant and unappropriated public lands are still subject to homesteading, up to, generally speaking, one hundred and sixty acres, and upon the payment of a minimum filing fee. Homestead lands are generally free, except that the patentee must meet certain conditions of residence and cultivation before he receives title. The homesteader may, after meeting certain requirements, pay for his land at the minimum price of one dollar and twenty-five cents an acre.[28] As a practical matter, homesteading occurs today only in Alaska, and the revenues realized from this source are minimal.

D. Lands for which payments are made

The net proceeds from the sale of public domain lands are shared with the States in which the lands sold are situated.

E. Recipients of payments and restrictions on their use

The various statutes provide that the States are to receive a percentage of the gross proceeds realized from the sale of public lands within their borders. The statutes provide varying restrictions on the uses to which the shared proceeds may be put. Generally speaking, the States must use the moneys received for public schools and roads. The precise restrictions applicable to each State are outlined in Table I. Payments are made to the States as soon as practicable after the close of the fiscal year by the Bureau of Land Management. BLM maintains records of land sales by State, and submits vouchers to the Treasury for the appropriate amounts to be remitted to each State. The checks sent by BLM to the various States in which land sales have occurred, are accompanied by a statement identifving the payments. BLM does not conduct any audit

---

26/ 43 U.S.C. § 713 (1964). Where the Government makes the survey the minimum price per lot is $15. 43 C.F.R. §§ 2242.2-5 (1967).
27/ 43 U.S.C. § 321 (1964).
28/ See generally 43 U.S.C. §§ 161 *et seq*. (1964); 43 U.S.C. § 678 (1964).

to determine whether the amounts shared with the States under the various statutes are used for the purposes specified in the Statutes.

F. Calculation of payments

The statutes almost uniformly provide that five per cent of the net proceeds from the sale of public lands will be shared with the States in which the lands sold are situated.[29] The

---

[29] In Alaska the percentage of proceeds shared with the State under the temporary legislation authorizing the sale of land discussed in Section C 4 of this Digest is 90%. In the Alaska Statehood Act of 1958 (72 Stat. 339 (1958)), Congress provided that Alaska might select for transfer from the Federal Government approximately 103 million acres of public land within a period of twenty-five years. It soon became apparent, however, that a number of years would be needed to make the selections. In 1964 legislation was enacted which granted temporary authority for the disposal of certain public lands in the western States and in Alaska in order to promote the orderly growth and development of communities, whose expansion might otherwise be hindered by the presence of large tracts of public lands. (43 U.S.C. §§ 1421-26 (1964)).

Alaska feared that the Federal Government might dispose of lands which the State might ultimately wish to select for itself. For this reason, the State requested that it receive ninety per cent of the proceeds from the sale of any public lands disposed under the terms of the 1964 legislation. In return for these proceeds Alaska surrendered the right to select acreage equal to the amount sold. Alaska's position is made clear in the extract from the hearings held on the legislation quoted below:

> "Finally, as has been noted above, the State of Alaska is now engaged in selection of public lands to which it is entitled under terms of the Statehood Act - a process which will continue for another 20 years. Although 20 years remain for selection of the acreage allotted under the Statehood Act, it is clear the slow pace at which the selection process is progressing will delay sizable transfers to the State for many years. The slow pace of land selection by the State is largely due to the lack of adequate surveys, a heritage of the neglect which Alaska suffered at the hands of the Federal Government, while Alaska was in territorial status. Meanwhile, it is entirely likely that many conflicts will arise between desires of the State to select land now in public ownership and plans of the Secretary of the Interior for sale. Much of the land which would probably be classified by the Secretary for sale would also be desirable for the State to select. To eliminate conflicts and, at the same time, protect the interests of Alaska, I shall

statutes do not define the term "net proceeds". As administered and interpreted by the Department of the Interior, however, the term means the gross proceeds received from land sales less a flat twenty per cent for administrative expenses.[30] There appears to be no reason for the adoption of the twenty per cent figure, but it has been, nonetheless, a long standing practice of the Bureau. In effect this means the States receive four per cent of the gross proceeds or five per cent of the net proceeds.

Gross proceeds received from sales of public lands are based on the selling price of the lands involved. With the exception of lands sold for public or recreational purposes and those public lands which are either free or the price of which is fixed in statute, all lands sold by the Bureau of Land Management are sold at not less than the fair market value of the land. The Interior Department's regulations with respect to each statute differ slightly as to the definition of the selling price of the land covered by the statute [31] but the practice of the Department is to sell at not less than market value. [32]

29/ Continued.

> "propose an amendment recommended by Governor Egan that would allow the State of Alaska to receive payment for 90 percent of the proceeds of public land sales conducted by the Interior Department, in return for which the State would surrender selection rights to an equivalent amount of land."

Hearings before the Subcommittee on Public Lands of the Senate Committee on Interior and Insular Affairs on H.R. 5159...H.R. 5498, An Act to Provide Temporary Authority for the Sale of Certain Public Lands and H.R. 8070, 88th Cong., 2d Sess. 131 (1964) (prepared statement of Senator Gruening).

The Bureau of Land Management carefully segregates lands sold in Alaska under this legislation to ensure that 90% of the proceeds from the sale of such lands are shared with the State. The 20% administration costs discussed in the text accompanying footnote 30 are, however, applied to determine the amount shared. (Part 1373 BLM Manual). This is the case even though the statute states "ninety per cent of the proceeds" rather than being couched in terms of a percentage of net proceeds. (43 U.S.C. § 1426 (1964)).

30/ Part 1373, BLM Manual, Letter to EBSMC from J.P. Beirnie, Assistant Director, BLM, March 26, 1968, EBSMC PLLRC File No. 207.

31/ (a) *Isolated Tracts* "appraised value" or "appraised price" means "the amount of money specified as the minimum acceptable bid" 43 C.F.R.§§ 2243.0 5(b) (1967)
(b) *Small Tracts* - Whenever lands are classified for direct sale by public auction they will be sold "at not less than their appraised fair market value..." 43 C.F.R. § 2233 4 (1967).
(c) *Alaska Public Sales* - land will be appraised "at its fair market value" 43 C.F.R. §§ 2241.1-2 (c) (1967).
(d) *Temporary Sales Authority*, "The term 'fair market value of the lands' means the dollar value of the lands as estimated....in accordance with approved Department of the Interior standards,..." 43 C.F.R. § 2243.2-1(c) (2) (1967)

32/ Interview with Donald Bailey, Chief, Land Classification and Investigation, Bureau of Land Management, March 27, 1968.

Appraisals of real property are conducted in conformance with the guidelines set forth in Appraisal of Real Property, Handbook Supplement to Interior Departmental Manual Part 602.[33] Basically, the approach taken to determine market price is by sales comparison or other similar property sold. This involves a search of local land transaction records and a comparison of the types of land involved giving consideration to topographical, soil and water conditions. The data of comparable sales including acreage involved, price per acre, description of property etc. is assembled in an appraisal report and from this report the market price for property to be disposed of is determined. BLM personnel are encouraged to take courses offered in the American Institute of Real Estate Appraisers and the Handbook Supplement itself contains a selected bibliography of appraisal materials. Sales of public lands are usually made by local BLM offices. [34]

With respect to sales of land for public and recreational purposes the Secretary of the Interior allows a discount to purchasers depending on the public or recreational use to which the property is to be put. The discount depends on the degree of public participation or use in the lands disposed of. The discounts are stated in terms of a percentage of the market value of the land with the minimum price being $2.50 an acre.[35]

---

[33] EBSMC PLLRC File No. 207.

[34] See Department of the Interior, BLM Bureau Order No. 701 and Amendment 104 (1967) EBSMC PLLRC File No. 207.

[35] BLM Manual, Part 2232 (1967) See also 43 C.F.R. §§ 2232.2-3 (1967).

LA 24 a

TABLE I

SUMMARY OF PROVISIONS RELATING TO SHARING WITH STATES OF NET PROCEEDS REALIZED FROM SALE OF PUBLIC LANDS

State	Statute	Percentage Shared with States
Ohio	2 Stat. 173 (1802)	3*
1 3 4	2 Stat 225 (1803)	
Louisiana	2 Stat. 641 (1811)	5
1 3 4 9		
Indiana	3 Stat. 289 (1816)	3*
1 3 4		
Mississippi	3 Stat. 348 (1817)	3*
1 3 4 6		
Illinois	3 Stat. 428 (1818)	3*
3 4 5 6		
Alabama	3 Stat. 489 (1819)	3*
1 3 4 6		
Missouri	3 Stat. 545 (1820)	3*
1 3 5		
Arkansas	5 Stat. 58 (1836)	5
1 2 4 5 6		
Michigan	5 Stat. 59 (1836)	5
1 4 5 6		
Florida	5 Stat. 789 (1845)	5
1 2 4 5 6	5 Stat. 789 (1845)	5
Iowa	5 Stat. 789 (1845)	5
1 2 4 5 6		
Wisconsin	9 Stat. 56 (1846)	5
2 4 6 8	9 Stat. 178 (1847)	

State	Statute	Percentage Shared with States
Minnesota	11 Stat. 166 (1857)	5
1 2 4 6		
Oregon	11 Stat. 383 (1859)	5
1 2 4 6		
Kansas	12 Stat. 126 (1861)	5
1 2 4		
Nevada	13 Stat. 30 (1864)	5
1 2 4 6 7		
Colorado	13 Stat. 32 (1864)	5
4 7		
Nebraska	13 Stat. 47 (1864)	5
4 6 8		
North Dakota 8	25 Stat. 676 (1889)	5
South Dakota 8	25 Stat. 676 (1889)	5
Montana 8	25 Stat. 676 (1889)	5
Washington 8	25 Stat. 676 (1889)	5
Idaho 8	26 Stat. 215 (1890)	5
Wyoming 8	26 Stat. 222 (1890)	5
Utah 8	28 Stat. 107 (1894)	5
Oklahoma 8	34 Stat. 267 (1906)	5
Arizona 8	34 Stat. 267 (1906)	5
	36 Stat. 557 (1910)	
New Mexico 8	34 Stat. 267 (1906)	5
	36 Stat. 557 (1910)	5
California 8	34 Stat. 518 (1906)	5
Alaska 8	72 Stat. 399 (1958)	5

*Whenever Congress gave the state 3% of the net proceeds from the sale of public lands rather than 5%, an additional 2% of the net proceeds were devoted to the building of a road or canal to the recipient State under the direction of Congress.

LA-246

KEY:
In order to become eligible to receive any percentage of the net proceeds from the sale of public lands within their boundaries, the states were required to agree to certain terms and conditions. These requirements, listed immediately under the State's name in the above chart, included:

1. The money received must be used for the making of roads and canals. This requirement was generally broadened until finally the Kansas provision stated the money might be used "for the purpose of making public roads and internal improvements or for other purposes as the legislature may desire." After the Civil War and the advent of the railroads, Congress dropped this requirement because the railroad land grants made it unnecessary.

2. The States must agree not to "interfere with the primary disposal of the soil within the same by the United States." "... the State must agree not to obstruct the sale of public lands within its borders."

3. The State must agree that "each and every tract of land sold by the United States from and after" the date of admission "shall remain exempt from any tax laid by order or under any authority of the State, whether for State, county or township, or any purpose whatever, for the term of five years from and after the day of sale."

4. The State must agree not to impose a tax on the real property of the United States within its boundaries for any purpose or through any of its subdivisions.

5. The State must agree not to tax the bounty lands granted for military service during the War of 1812 for three years after the date of the patents.

6. The State must agree not to tax out-of-state property owners at any higher rate than it taxes its own citizens.

7. The State must use the money for constructing ditches or canals to effect a general system of irrigation of the agricultural land in the State, in addition to improving roads.

8. The State must use the money received from the sale of public lands within its boundaries for educational purposes. For example, Illinois' enabling act provides that the 3% received by that State must be used for the encouragement of learning and that one-sixth of this amount must be exclusively bestowed on a college or university.

On the other hand, the act admitting Wisconsin to the Union does not require that State to use the proceeds for education. However, the Wisconsin constitution provides that such proceeds must be used for common schools and the residue for academies and normal schools.

In North Dakota, South Dakota, Montana, Washington, Idaho, Wyoming, Utah, Oklahoma, Arizona, New Mexico, California and Alaska, this is the only requirement or restriction. However, the entire 5% is not placed at the disposal of the State. The 5% is paid to a permanent fund and only the interest of the fund is available for common school purposes.

9. The State must agree not to impose any tax, duty or toll on any inhabitant of the United States for the use of the Mississippi River, or any other navigable waterway which empties into the Mississippi or the Gulf of Mexico.

FEDERAL STATUTE DIGEST NO. LB

Act of May 23, 1908 (Sharing of Revenue from National Forests) 35 Stat. 251, 260 (1908), as amended, 16 U.S.C. § 500 (1964)

I. Background

With the closing of the frontier in 1890 increasing segments of the American public came to realize that if the then current, wasteful policy with respect to the nation's forest and watershed resources were to continue, such resources would be irretrievably lost.

In response to the increasing public demand that "something be done", Congress, in 1891, authorized the President to create by executive action timber reservations in public lands bearing forests.[1] This Presidential authority was enlarged in 1897 to permit the President to modify by Executive Order the area of any "National Reserve" previously created.[2]

As a result of the extensive reservation program undertaken by President Theodore Roosevelt, Congress, in 1907, restricted the President's authority to create additional National Reserves by executive action.[3] In the same legislation, Congress designated these reserves to be "National Forests".

For fiscal years 1907 and 1908 Congress provided for a sharing of the revenues derived from the National Forests reserved from the public domain.[4]

The statutes provided that ten per cent of the revenues were to be returned to the states for the benefit of the county or counties in which the forest was located. These two statutes contained a limitation that no county could receive an amount greater than forty per cent of its revenues from all other sources.

The revenue sharing provision was made permanent in 1908 and the percentage shared was increased to twenty-five per cent. At the same time the forty per cent limitation which applied to the counties was removed.[5]

The scope of the statute was enlarged in 1911 by the Weeks Act to include certain acquired lands incorporated into National Forests as well as reserved public domain lands. The forty per cent limitation on the amount receivable by any one county was included in the statute,

---

1/ 26 Stat. 1103 (1891), 16 U.S.C. § 471 (1964).
2/ 30 Stat. 34 (1897), 16 U.S.C. § 473 (1964).
3/ 34 Stat. 1269 (1907), 16 U.S.C. § 471 (1964).
4/ 34 Stat. 669, 684 (1906); 34 Stat. 1256, 1270 (1907).
5/ 35 Stat. 260 (1908), 16 U.S.C. § 500 (1964).

but only as applied to acquired lands.[6] This limitation was subsequently removed, however, in 1950.[7]

By the 1930's, many logged areas on National Forest lands were not reproducing naturally as rapidly as necessary to the desired degree of stocking which would sustain allowable cuts at maximum potential; neither were funds available to reforest cut-over stands artificially. To provide opportunity for optimum timber growth, including selection of genetically desirable species, to prevent erosion, and improve other social and economic values of these public lands, Congress passed the Knutson-Vandenberg Act in June 1930.[8] Under this Act, the Secretary of Agriculture was authorized to require a purchaser of National Forest timber to make deposits of money in addition to the payments for timber, to cover the cost to the United States for reforestation and care of young stands, among other things, and within certain limitations. In 1944 Congress introduced a provision designating stumpage value, i.e., as the basis for determining the amount of payments that are to be made.[9]

---

[6] 36 Stat. 961, 963 (1911).
[7] 64 Stat. 87 (1950), 16 U.S.C. § 500 (1964).
[8] 46 Stat. 527 (1930), 16 U.S.C. § 576 (1964).
[9] 58 Stat 737 (1944), 16 U.S.C. § 500 (1964).

II. Provision for Payments and its Administration

A. Pertinent text of the statute

16 U.S.C. § 500 (1964) provides as follows:

> "Twenty-five per centum of all moneys received during any fiscal year from each national forest shall be paid, at the end of such year, by the Secretary of the Treasury to the State in which such national forest is situated, to be expended as the State legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated: Provided, That when any national forest is in more than one state or county the distributive share to each from the proceeds of such forest shall be proportional to its area therein. In sales of logs, ties, poles, posts, cordwood, pulpwood, and other forest products the amounts made available for schools and roads by this section shall be based upon the stumpage value of the timber."10/

B. Congressional rationale for payments

The Congressional debates relating to the statute indicate that it was enacted as an in-lieu-of-tax measure. The legislation was enacted against a background of considerable concern expressed mainly by the Western States as to the Federal Government's policy of withdrawing land from disposal and, therefore, taxable ownership by placing such land in National Forests. The legislation represents an attempt to compensate the States for the loss of revenue associated with the withdrawal of lands

---

10/ 16 U.S.C. § 501 (1964) provides that an additional 10% of all moneys received from the National Forests shall be available to be expended for the construction and maintenance of forest roads and trails in the National Forests in the States from which such revenues were derived. This legislation was originally a temporary measure forming part of the Agriculture Department's appropriation for fiscal 1913. (37 Stat. 288 (1913)). It was made permanent in 1913 (37 Stat. 843 (1913)). The rationale of the provision was described in the floor debates as follows:"...undoubtedly it is the object and intent of the Congress in such legislation to give the residents living adjacent to these forest reserves fair roads, decent trails, to go from one community to the other over the reserves you have,..." 58 Cong. Rec. 2958 (1913) (remarks of Representative Raker). The effect of this provision is to make available 35% of the revenues realized from National Forests for the benefit of the States. The 35% figure is important in that it influenced the percentage formula utilized under the Mineral Leasing Act of 1920 (37-1/2%). See Digest LF.

from use. The compensation provided was to defray the cost of local government services. The following are extracts from the floor debates on the statute:

> "If the lands are not reserved from entry they gradually become the subject of private ownership, find their way to the tax books and are added to the property of the State in which they lie. I insist that after they have served the Governmental purpose of controlling the flow upon the watersheds of the navigable streams the surplus proceeds equitably should go exactly where the lands would have gone had the reserve not been established....
>
> "Good faith upon the part of the Government demands that the States should have the benefit of those funds for educational purposes after the costs of administration shall have been met. The 10 per cent which is to be paid into the State treasury under existing law for schools and roads recognizes the principle, but does not go far enough. The Federal Government should have the 10 per cent and the 90 should go to the schools and roads of the State. In my judgment we should early announce the policy of committing these funds sacredly to this purpose....
>
> "The Rights of the State in National Forests
>
> "The National Government has long been committed to the policy of appropriating the public domain to the people for homes. In this way the West has been settled; the lands have been added to the taxable values of the States and produced the funds by which roads and schools have been maintained. If the public domain is to be reserved in forests that produce a revenue, the net proceeds should go to the States for the maintenance for agricultural schools for the people...."[11]
>
> "The States are unable to collect any taxes within this area, permanently withdrawn from settlement and sale. But at the same time the State is burdened with the expense of maintaining the public roads, of executing the criminal laws, and all that appertains to a police jurisdiction over that region....
>
> "...Instead of leaving the entire burden of police regulation over that area upon the State without any compensating benefit, Congress thought proper to authorize and

---

[11] 42 Cong. Rec. 3833-35 (1908) (Remarks of Representative Reid).

> direct that a certain percentage of the receipts from the sale of timber and other things should be paid over to the States in order to compensate them for the expense incident and unavoidably incident to the administration of the local law."[12]
>
> "The forest reserves are reserves, presumably, for all time. Therefore settlement upon them practically stops. There may be a few exceptions. So, on the face of the proposition, there should be some contribution from the United States for the settlers. This amendment is an exact duplicate of the law as it now stands, enacted three or four years ago, setting apart 10 per cent. That has been thought too little by some, and hence 25 per cent is now proposed in the exact language of the existing law. It is not establishing a new policy, but it is enlarging the scope of it from 10 to 25 per cent, in lieu of the taxation that would be received if the reserves were open to settlement....
>
> "...Now take half of a State and throw it into a forest reserve; it is so much not subject to taxation. Hence this proposition of paying the State some portion of the income, so that the Government may pay a part toward the education of the youth of the State and the care and support of the State Government."[13]
>
> "[A]s soon as the Government elects to depart from its forest policy and to restore the public domain to settlement the 25 per cent will, of course, cease."[14]
>
> "Already we have upon the statute books a grant to these States of 10 per cent of the income received from the forest reserves and income received from the people of those States for timber and for grazing. So it is a simple question as to whether that amount should be increased; whether 10 per cent of the gross revenue is sufficient to compensate the States for the loss of the taxation which they would be enabled to levy if these lands were in private ownership...."[15]

The following is an extract from the House report explaining the 1944 amendment to the statute, providing that the revenues from timber sales shared with the states are to be limited to the value of un-cut stumpage:

---

[12] *Id.* at 5924 (remarks of Senator Carter).
[13] *Id.* at 6058 (remarks of Senator Warren).
[14] *Id.* at 6059 (remarks of Senator Carter).
[15] *Id.* at 6061 (remarks of Senator Newlands).

> "Section 212. DETERMINATION OF TIMBER VALUE IN CONNECTION WITH STATE PARTICIPATION IN FOREST REVENUE
>
> "This section provides in effect, for a definition of the revenue from sales of timber for the purpose of the distribution of a portion of such revenue from the national forests under the acts of May 23, 1908 (16 U.S.C. § 500), and March 4, 1913 (15 U.S.C. § 501). Under this language the receipts from sales of timber which will be available for percentage distribution under these acts will be limited to the value of uncut stumpage, which appears to have been the purpose of the original legislation, and such revenue will not include receipts based upon the expenditures of Government funds for converting the stumpage into certain other forms. Provision to this effect was first inserted into the Agricultural Appropriation Act for the fiscal year 1940 and has been continued to the present time."[16]

Despite the apparent purpose that the payments were to be considered in lieu of taxes, two judicial decisions have taken a slightly different view of the Congressional rationale.

In Trinity Independent School Dist. v. Walker County,[17] the court stated that the statute:

> "...evidences no intention on the part of Congress to make payments in lieu of taxes, but rather a friendly purpose to create trusts for the benefit of counties in which national forests are located in recognition of the national interest in education and road building."

Similarly, in Tree Farmers Inc. v. Coeckner,[18] the Idaho Supreme Court characterized the payment as "in the nature of an assistance grant."

16/ H. R. Rep. No. 1198, 78th Cong. 2d Sess. 12 (1944).
17/ 287 S.W.2d 717, 722 (Tex. Civ. App. 1956).
18/ 86 Idaho 290, 294, 385 P.2d 649, 651 (1953).

C. Administration

The National Forests are administered and managed by the Forest Service, an agency of the Department of Agriculture. The Secretary of Agriculture has broad authority to issue regulations concerning the use and management of the National Forests.[19] Pursuant to this authority, extensive regulations have been issued.[20] These regulations have been extensively supplemented by the Forest Service Manual and various Forest Service handbooks which set forth in detail such matters as timber management and appraisal and grazing practices. The information contained herein has been obtained from these sources as well as extensive interviews with Forest Service personnel.

D. Lands for which payments are made

The revenue sharing provision of the statute applies to all National Forests, whether public domain or acquired lands. As of June 30, 1966, the total area of National Forests including acquired lands was some one hundred and eighty-two million acres.

E. Recipients of payments and restrictions on their use

The statute provides that the specified payments are to be made "to the state in which such national forest is situated, to be expended as the State legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated: Provided, That when any national forest is in more than one state or county the distributive share to each from the proceeds of such forest shall be proportioned to its area therein...." Because of this provision the Forest Service keeps a record of all receipts by county and acreage of counties within National Forests.

With respect to the provision that payment be made to the State for the benefit of schools and roads, it has been held that direct distribution to school districts would be improper.[21] The United States Supreme Court has stated, however, that the statute does not direct any particular division of the payments received between schools and roads.[22]

The statute provides for payment at the end of the fiscal year, and actual payments are made as soon thereafter as is practicable.

No attempt is made by the Forest Service, the General Accounting Office, or any other Federal agency to enforce the use of the payments for the prescribed purposes. However, the Forest

---

[19] 16 U.S.C. §§ 476, 551 (1964).

[20] 36 C.F.R.

[21] State ex rel Arrington v. Board of Supervisors of Perry County, 221 Miss. 548, 73 So. 2d 169 (1953).

[22] King County v. Seattle School Dist. 263 U.S. 361 (1923).

Service does obtain assurance from the States that the provisions of the Civil Rights Act of 1964 are being complied with.[23] However, the amount of the receipts from National Forests is broken down by county by the Forest Service and the payments to the States are accompanied by a schedule showing the origin of the receipts. Furthermore, the payments are publicized through press releases, etc., so that as a practical matter the statute is somewhat self-policing with respect to the restrictions on the use of payments.

---

[23] 42 U.S.C. §§ 2000d, d-1, (1964); 7 C.F.R. § 15.4 (1967).

F. Calculation of payments

The statute provides for an annual payment of "twenty-five per centum of all moneys received during any fiscal year from each national forest."

Revenues from the National Forests are derived from a number of sources, including sales of timber, mineral leases, grazing permits, and various special use permits.

1. Timber sales

The major source of revenue from the National Forests is the sale of timber. Timber sales are made on the basis of advertised competitive bidding. The Secretary of Agriculture has been given the authority to issue regulations concerning the use and management of National Forest timber.[24] The Secretary has delegated the responsibility for the sale of timber to the Chief of the Forest Service, who in turn has delegated his authority to Regional Foresters.[25] Further delegations are made according to the size of the timber sale. In the sale of National Forest timber the Forest Service does not attempt to maximize its revenues. The policy followed by the Forest Service is that of "multiple use and sustained yield".[26]

---

[24] 16 U.S.C. §§ 476, 551 (1964).

[25] 36 C.F.R. § 221.6(c) (1967).

[26] 16 U.S.C. § 531 (1964) defines multiple use and sustained yield as follows:

> "(a) 'Multiple use' means the management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.
>
> "(b) 'Sustained yield of the several products and services' means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land."

The selling price of National Forest timber is calculated on what is called "stumpage value", i.e., the value of uncut timber in place. The statute requires that this value be used in calculating the revenues to be shared with the States.[26a] It is also the value below which the Forest Service will not accept bids for National Forest timber. Stumpage value is supposed to reflect appraised or market value.[27] Under procedures developed by the Forest Service, stumpage has been determined to be a value which is "a residual which develops after cost and profit have been deducted from estimated value returns."[28] The stumpage for each particular forest is calculated differently taking into consideration a number of variables including, but not limited to: prevailing market conditions, location of manufacturing or marketing point, and transportation points.[29]

It is the practice of the Forest Service to require purchasers of National Forest timber to build roads to harvest the timber purchased. The cost of constructing these roads is one of the factors taken into consideration by the Forest Service in computing the stumpage value.[30] Since stumpage value is a "residual" value computed after costs, among other items, have been deducted, the amount available for distribution to the States is lessened by the amount of road building costs estimated and set forth in the timber purchase contract.

Conversely, if the Forest Service itself builds roads, such costs are not incurred by private purchasers of timber and stumpage value, and, correspondingly, the amount available for distribution to the States is increased. Since in many cases the Forest Service has neither the money nor the personnel to build roads necessary for timber harvest, such roads and the costs thereof must be borne by private parties if timber is to be harvested at all.

Stumpage value is also used by the Forest Service even where it sells partially finished wood products, such as cut and decked logs.[31] The value of such logs will in many cases be greater than the value of in-place timber.

[26a] This provision was added in 1944, 58 Stat. 737.

[27] Tit. 2423.12, FSM (1966); 16 U.S.C. § 476 (1964) provides that the Secretary of Agriculture may not sell timber at less than its appraised value.

[28] Tit. 2423.21 FSM (1966).

[29] Tit. 2423 et. seq. FSM (1966).

[30] Tit. 2423.26 FSM (1966). All of the practices here described are prescribed in various sections of Tit. 2400 FSM.

[31] Stacked and decked logs could occur, for example, if the Forest Service or power companies cut a right-of-way.

In this case, the practice of the Forest Service is to value logs, taking into consideration the costs of removing such logs by a purchaser. The Forest Service then computes the stumpage value of such logs as if they were in place as standing timber and not accessible by road or right-of-way. Only that part of the sale price of the logs equal to the stumpage value is available for distribution to the states. Any difference between the sale price and stumpage value is remitted to the miscellaneous fund of the Treasury. This is in accord with, and indeed required by the wording of the statute.

The Forest Service also requires purchasers of National Forest timber to remove slash and other fire hazards and, in general, "clean up" the area harvested.[32] If the purchaser is unwilling to do this, it may alternatively pay an amount equal to the estimated cost of such area improvement and the Forest Service will perform the necessary work. Any amounts received for this purpose in excess of the costs incurred by the Forest Service are returned to the timber purchaser. None of these amounts are made available for distribution to the States.[33]

None of these practices are specifically provided for in the revenue sharing statute, except the requirement that shared revenues be based on stumpage value, and that timber be sold at not less than its appraised value. The requirement that the value of uncut timber be used for determining the amount of revenues to be shared with the States is a rare example of the legislative history of a statute of this sort containing guidelines for administration of the statute.[34] However, the Secretary of Agriculture has general authority to sell timber from the National Forests under such regulations as he shall prescribe.[35] It is under this broad authority that these practices have been developed.

In addition to the prices paid for the timber, the logging companies may be required by the Secretary of Agriculture to deposit money into a Forest Service Fund (the Knutson-Vandenberg ("K-V") Fund) to cover the expenses of planting

---

32/ Tit. 2403.1 FSM (1964).

33/ This procedure is authorized under 16 U.S. C. § 490 (1964).

34/ See text accompanying footnote 16 for excerpt from H.R. Rep. No. 1198, 78th Cong. 2d Sess. 12 (1944) defining "stumpage value".

35/ 16 U.S.C. § 476, 551 (1964).

new trees and managing the forest ("sale area betterment").[36] The statute treats these deposits as a special fund. They are not considered to be payments for timber. The Forest Service believes that "they are more in the nature of business expenses associated with harvesting national forest stumpage."[37] As a general practice, the Forest Service does collect K-V Funds, and it is the stated policy of the Forest Service "(1) to include the additional amount for [sale area betterment] in stumpage payments to simplify procedures, and (2) to use K-V Funds to the fullest practicable extent in accordance with prescribed limitations and guides."[38]

2. Mineral leases

Mineral leases on the National Forests are of two types - those which pertain to property in public domain land, and those which pertain to property on acquired lands. In either case, the leasing is administered by the Department of the Interior's Bureau of Land Management ("BLM"). In the case of acquired lands, the BLM collects the leasing fees and transfers the receipts collected to the Forest Service. Under the provisions of the Mineral Leasing Act for Acquired Lands, twenty-five per cent of these receipts are remitted to the States in which the National Forests to which the mineral leases relate are situated.[39]

In the case of mineral leases pertaining to public domain land in National Forests, BLM collects the leasing fees and disburses them according to the terms of the Mineral Leasing Act of 1920.[40]

Revenues from mineral leases are composed of rents, royalties, and bonuses. Rents relate to leased lands which are not in a productive phase and are stated in terms of a flat sum per acre. Royalties are recovered from productive lands and are usually stated in terms of a percentage of the value of the product recovered. In the case of coal, the royalty is stated in terms of cents per ton. Bonuses are the extra amount which a bidder for a mineral lease may have to pay in order to obtain the lease. It is usually a single, flat sum payment.[41] The value of the mineral recovered on which royalties are based is based on market conditions with consideration being given to prices being recovered for like quality minerals in the same area, and to the actual price received in the majority of cases. The actual or "gross" amounts received from rents, royalties, and bonuses are the amounts used in calculating the amounts to be shared with the states. While the BLM does impose certain conditions on lessees regarding the use of mineral bearing lands, such as mine safety standards and requirements that the land be left in a safe condition upon abandonment or termination of a lease, the costs incurred by lessees in meeting these conditions are not deducted from rents, royalties or bonuses payable. Mineral leases on National Forests must also have the approval of the Forest Service and meet any requirements which may be imposed by the Forest Service as to the use of the land to which the lease relates. These requirements relate to timber cutting, suppression of forest and brush fires, removal of debris, and general conditions requiring the lessee to recognize other existing uses of the lands under lease such as timber harvesting and grazing.

---

[36] 46 Stat. 527 (1930), 16 U.S.C. § 576b (1964).

[37] Hearing Before The Subcomm. on Forests Of The House Comm. on Agriculture on H.R. 774, 90th Cong. 1st. Sess, Ser. J. pt. 2 at 111 (1967) (statement of M.M. Nelson, Deputy Chief of the Forest Service, Department of Agriculture.) See also memorandum to Chief, Forest Service, from Assistant General Counsel, Department of Agriculture, dated February 21, 1963, stating that the 25% sharing provision does not apply to K-V collections. EBSMC PLLRC File No. 201.

[38] Tit. 2477.03 FSM (1967).

[39] 61 Stat. 915 (1947), 30 U.S.C. § 355 (1964).

[40] 30 U.S.C. § 191 (1964).

3. Grazing fees

Grazing fees are calculated by using what is called a base fee. The base fee consists of the average livestock prices for the years 1921-31 and the average grazing fees for the same period. In determining the average grazing fees, a study of the rentals paid to private persons, corporations, States and other Government agencies for the use of comparable grazing land was made.[42]

The current fees bear approximately the same ratio to the 1931 base fees that the livestock prices received by producers for the preceding years bear to the base livestock prices. The fees are recomputed every year taking into consideration the fluctuations in meat prices.[43] The ratio thus derived is then applied to the field computation by multiplying the local 1931 unit fee by the currently approved percentage derived from the market prices of beef. The Forest Service imposes certain conditions on the use of grazing lands under its control, such as the location of salt lakes and bedding grounds and the erection of fences to control livestock movement. These conditions do not, however, affect the rates of the fees themselves.

41/ The Secretary of the Interior has broad authority to issue regulations concerning the terms and conditions under which mineral leases will be made as well as to set the rents and royalty rates, subject, in some cases, to certain statutory perscribed minimums. (See *e.g.*, 30 U.S.C. § 212 (1964)). Regulations concerning rents, royalties and bonuses may be found beginning at 43 C.F.R. § 3100 *et seq*. (1967).

42/ Tit. 2234.11 FSM (1966).

43/ Tit. 2234.13 FSM (1966).

4. Special use permits

Additional revenues are obtained from permits for special uses of National Forest lands. Such permits are issued to private citizens to operate ski areas, restaurants, service stations, and the like. The fees obtained from these permits are usually based on a graduated scale depending on volume of sales. Other fees, such as those applicable to camper outfitter permits, are flat fees based on the number of days used.[44] The twenty-five per cent formula is applied to the gross amount of fees received.

5. Other Revenues

Additional sources of revenue are the proceeds realized from the sale of materials from National Forest lands, such as yucca, ferns, pumice, gravel, etc.[45] and from power licenses to private producers. The licenses are renewals of licenses granted before the Federal Power Act of 1920 and certain other licenses relating to secondary power sites (less than 2,000 H.P.). License fees are based on a fixed sum per acre of National Forest land occupied by the power site.[46] Other sources of revenue are realized from trespass fines and admission and user fees for certain recreational areas.

Special Deductions

Three situations exist in which deductions are made before the twenty-five per cent of gross revenue figure is calculated. The first situation is when Congress authorizes the Secretary of Agriculture to use the revenues from National Forests in a particular State to purchase more land in that State in order to "round off" the National Forests.[47] The second situation involves the States of Arizona and New Mexico. The payments to Arizona and New Mexico are computed on the total revenues from the National Forests in those two States less the amount to be paid under the 1910 Act admitting Arizona and New Mexico into the Union,[48] i.e., the twenty-five per cent formula is applied after payments have been made to the two States for unselected school lands. The third situation involves the payment in lieu of taxes with respect to the lands situated in the Boundary Waters Canoe Area of Superior National Forest in Minnesota. These payments are deducted from the revenues derived from Superior National Forest before applying the twenty-five per cent calculation.[49]

---

[44] Forest Service "Review Draft of the Instructions for Implementing A Graduated Fee System", July 10, 1967.

[45] For a discussion of this source of revenue see Digest LQ.

[46] Telephone interview with Mr. John A. Adams, Engineering Staff, Forest Service, March 27, 1968.

[47] See, e.g., 49 Stat. 866 (1935); 52 Stat. 347 (1938); 54 Stat. 46, 297 (1940).

[48] 36 Stat. 557, 562, 573 (1910); see also 20 MS 1305 (1923), decision of Comptroller General. See Digest LC.

G. Problem areas or matters suggested for consideration by the Commission

1. Differences in revenue sharing formulas as applied to National Forests on public domain lands and acquired lands

There appears to be no logical reason why revenues from mineral leases should be shared in a different fashion depending on whether the lands leased are public domain lands or acquired lands. One explanation may be that mineral leasing was authorized on some acquired lands, *e.g.*, acquired National Forest lands, prior to the enactment of the Mineral Leasing Act of 1920, the provisions of which are applicable only to public domain lands. The Congress may not have wished to disturb the existing arrangement with respect to acquired lands, and thus there came to be two different revenue sharing arrangements with respect to the same type of land. As a practical matter, possible conflicts under the two statutes appear to be minimal since most National Forests acquired land is situated in the Eastern States while the National Forests on public domain land are located in the Western States. In addition, since fifty-two and one-half per cent of the revenues realized from mineral leases on public domain lands are deposited in the Reclamation Fund for expenditure in the sixteen western reclamation States, there may have been some feeling on the part of the Eastern States that revenues derived in the east should not be used for the benefit of Western States only. For a discussion of the Mineral Leasing Act of 1920 and the Mineral Leasing Act For Acquired Lands of 1947 see Digests LF and LR.

2. Inclusion of K-V receipts as gross amounts available for distribution to the States

The counties within which National Forests are located feel that the twenty-five percent of shared revenue should be calculated taking into consideration the K-V Fund deposits as well as the money paid for the timber. The counties' view on this matter may be influenced by the circumstance that the Forest Revenues Act speaks in terms of sharing all monies received from the National Forests. However, the K-V statute itself does provide for a special fund. The Forest Service's view on this proposal is that the present system is "proper and equitable".

---

[49] See Digest LS.

The Deputy Chief of the Forest Service in hearings be-before the Subcommittee on Forests of the House Committee on Agriculture stated:

> "Counties in effect are sharing in and benefiting from the investments in the land necessary to assure continuous and future timber crops. This means employment, payrolls, and future income when the next crop is harvested. It would seem equitable that the counties participate in this investment....
>
> "...While the inclusion of K-V and other special deposits in the total National Forest receipts may increase the total receipts, it could not assure significant increases in payments to the counties or prevent fluctuations from year to year in the amounts of payments."[50]

The counties also appear in some cases to object to the method of calculating the minimum bid price that will be accepted by the Forest Service from purchasers of National Forest timber. By including slash removal and road building costs in the calculation of minimum bid of "stumpage" value prices, the amount of money actually received is reduced which affects the amount of revenue to be shared. The explanation of this policy is that the Forest Service itself is unable to incur all of these costs and that unless private persons are permitted to absorb them there would be far less harvesting of National Forest timber.

---

[50] Nelson, *supra* note 37.

FEDERAL STATUTE DIGEST NO. LC

Act of June 20, 1910 (Arizona and New Mexico Enabling Act provisions relating to revenue sharing) 36 Stat. 557, 562, 573 (1910)

I. Background

The Enabling Act admitting Arizona and New Mexico to the Union in 1912[1] included the customary provisions dealing with the support of public education, viz., the grant of certain sections of each township to the two states for public education and the sharing with the two states of five per cent of the net proceeds realized from the sale of public lands. In addition, Congress provided that the two states might take indemnity lands in place of the granted school section lands located within National Forests. If no indemnity land has been selected by the states, the Enabling Act provides for a sharing of the revenues realized from lands which the two states were entitled to select, situated within National Forests located in the respective states.

II. Provision for Payments and Administration

A. Pertinent text of statute:

Section 6 of the Act, applicable to Arizona, and Section 24 of the Act, applicable to New Mexico, both provide in part as follows:[2]

> "... That the grants of sections two, sixteen, thirty-six to said State, within national forests now existing or proclaimed, shall not vest the title to said sections in said State until the part of said national forests embracing any of said sections is restored to the public domain; but said granted sections shall be administered as a part of said forests, and at the close of each fiscal year there shall be paid by the Secretary of the Treasury to the State, as income for its common-school fund, such proportion of the gross proceeds of all the national forests within said State as the area of lands hereby granted to said State for school purposes which are situate within said forest reserves, whether surveyed or unsurveyed, and for which no indemnity has been selected, may bear to the total area of all the national forests within said State, the area of said sections when unsurveyed to be determined by the Secretary of the Interior, by protraction or otherwise, the amount necessary for such payments being appropriated and made available annually from any money in the Treasury not otherwise appropriated."

---

[1] 36 Stat. 557, 562, 573 (1910).

[2] Ibid.

B. Congressional rationale for payment

The House Committee report dealing with the revenue sharing provision gives succinct explanation for its enactment.[3]

> "The new States naturally dislike to be compelled to take indemnity lands for these forest sections, because indemnity lands of equal value cannot be obtained. On the other hand, it would be inconvenient for the States and undoubtedly injurious to the interests of the Federal Government if the States were permitted or were obliged to lease, sell, or manage these sections scattered through the national forests.
>
> "It has therefore been provided that the States may, at their option, take indemnity lands for school sections within national forests, or may allow the sections so left in national forests to remain under the control of the Federal Government to be administered in connection with the national forests, the States to receive, as income from their school sections, such proportion of the gross proceeds of the income from national forests within their respective boundaries as the area of their school sections bears to the total national forest area within their respective boundaries. The committee has little doubt that the States will be glad to avail themselves of the privilege of having their forest sections administered in this way."

C. Administration

The statute is administered by the Forest Service of the Department of Agriculture, since it is the Forest Service which manages the National Forests. The administrative materials dealing with the revenue sharing provision are in the form of internal accounting instructions detailing the application of the percentage formula. These instructions conform to the wording of the statute.[4] There are also extensive regulations, manuals, etc. dealing with the management of the National Forests themselves, which are applicable to the lands to which these provisions relate.[5]

D. Lands for which payments are made

The statute directs that payments be made with respect to those lands granted to Arizona and New Mexico for the support of common schools which are located within National Forests in Arizona and New Mexico and for which the two States have not selected indemnity lands of like kind.

---

[3] H. R. Rep. No. 152 61st Cong., 2d Sess. 3 (1910)

[4] The accounting instructions are set forth in an undated Forest Service "Training and Procedural Guide" prepared by the Budget and Finance Section of the Forest Service. See EBSMC PLLRC File No. 204. See also tit. 6500 FSM (1967).

[5] For a discussion of the types of revenues realized from National Forests and the administrative practices relating to the computation of these revenues, see Digest LB.

E. Recipient of payment and restrictions on their use

The Statute Directs payments to Arizona and New Mexico. The payments to the States are made as soon as practicable after the close of the fiscal year. The Forest Service has records furnished by the Department of the Interior of the acreage granted to Arizona and New Mexico for the support of their common schools situated in National Forests and for which the two States have not selected indemnity lands. It also has its own records of the acreage of the National Forests situated in the two States and from these two forests the proportional allocation of the receipts realized from all National Forests in the two States are made. The Forest Service does not check to see whether the moneys paid to these States are treated as income to the common school funds of the two States. However, the payments when made are accompanied by a statement prepared by the Forest Service identifying the statute under which the amounts are paid.[6]

F. Calculation of payments

The statute directs payments to Arizona and New Mexico as income to their respective common school funds of such "proportion of the gross proceeds of all the national forests within [each] State as the area of lands" granted to each State for the support of the common schools bears to "the total area of national forests within [each] State". The payments are made prior to the calculation of the twenty-five per cent of gross revenues realized from the National Forests in the two States which are shared with the two States under the general legislation providing for the sharing of revenues with the States from revenues realized from National Forests.[7]

Except for the different percentage of receipts shared, revenues are calculated under the statute in the same manner as for all National Forest receipts. The percentage calculation required under the statute is described in E above.

---

[6] Telephone interview with Mr. Glenn C. Todd, Director Budget and Finance Section, Forest Service, March 21, 1968.

[7] This legislation is discussed in Digest LB.

FEDERAL STATUTE DIGEST NO. LD

Act of August 28, 1937
(Revested Oregon and California Railroad Grant Lands)
50 Stat. 874, as amended, (1937), 43 U.S.C. §§ 1181 f and g (1964)

I. Background

At an early date, Congress realized that coast-to-coast, rapid transportation facilities were essential to the nation's development, and that settlement of the country's farthest confines by its own citizens was the surest guaranty of the integrity of the national boundaries. After the Civil War, one of the chief means of implementing the national policy of land settlement was by means of large grants of public lands to private enterprises engaged in the construction of rail and wagon roads.

Among the grants so made was the Oregon and California Railroad Company Land Grant, authorized by Congress in 1866.[1] The legislation granted public domain lands, in a checkerboard pattern of odd-numbered sections of land in a zone approximately sixty miles wide and three hundred miles long extending from the Columbia River in Oregon south to the California state line. The State of Oregon was to designate the recipient of this grant, which was the Oregon & California Railroad Company.

This transfer of public land to private ownership subjected the granted lands to state and local taxation. At the same time, it entitled the land to whatever protection and services the local units of government could provide.

One of the conditions of the grant was that the grantee sell the land it received only to actual settlers, in quantities not greater than one quarter section to one purchaser and at a price not exceeding $2.50 an acre. The failure of the company to observe this provision resulted in the adoption by Congress of a joint resolution on April 30, 1908,[2] instructing the Attorney General to institute judicial proceedings, for enforcement of all rights and remedies of the United States growing out of the grant, and the failure of the railroad to observe the stated conditions.

The end result of the litigation thus begun was a 1915 United States Supreme Court decision[3] granting an injunction against any sales or disposition of the lands or the timber thereon "until Congress shall have a reasonable opportunity to provide by legislation for their disposition in accordance with such policy as may be fitting under the circumstances, and at the same time secure the defendants all the value the granting acts conferred upon the railroad."[4]

---

[1] 14 Stat. 239 (1866).

[2] 35 Stat. 571 (1908).

[3] Oregon & California R.R. Co. v. United States, 238 U.S. 383 (1915).

In 1916, Congress enacted the Revestment Act[5] which returned all the unsold land then held by the railroad company to Federal ownership. The legislative history of this act indicates the immediate disposal of the land was contemplated so that the lands might be returned to the local tax rolls as soon as possible. All of the moneys received from the sale of the grant lands were to be placed in the Oregon and California Land Grant Fund. Two priorities were to govern the disposition of this Fund, (1) the railroad company was to be paid $2.50 for each unsold acre and, (2) the United States Treasury was to be reimbursed for the taxes paid on the land grant for the years 1913-1915. After the satisfaction of these priorities the remaining revenues were to be divided among the counties, the State of Oregon and the United States Treasury.[6]

The sale of these revested lands proceeded slowly, however, because of the general inaccessability of the timber on the lands and poor market conditions. The result was that little income was realized from the lands and a period of ten years elapsed before the two priorities were satisfied.

An attempt to remedy this situation was made in 1926 when Congress passed the Standfield Act.[7] This act suspended the payment provisions of the 1916 Revestment Act and appropriated a sum from the Federal Treasury equal to the amount that the counties would have received as back taxes for the years 1916-1926. In addition, the legislation provided that, for years subsequent to 1926, amounts equal to the taxes upon the revested lands should be paid to the counties annually. Any income realized from the revested lands was to be credited to the Oregon and California Land Grant Fund. Payments under the 1916 Revestment Act were to be resumed when all charges against the Fund had been liquidated and the United States had been completely reimbursed.

The purpose of the Standfield Act was to stabilize the revenues of the affected counties pending final disposal of the revested lands. The wording of the Act was such that the tax equivalent payments to the counties did not appear to have been made contingent upon the existence of a credit balance in the Oregon and California Land Grant Fund. A 1928 Comptroller

---

[4] Id. at 439.

[5] 39 Stat. 219 (1916).

[6] 25% was to go to the counties as in lieu of tax payments, 25% to the State school fund, 40% to the Reclamation Fund, and 10% to the Treasury.

[7] 44 Stat. 915 (1926).

General's decision in 1933,[8] ruled, however, that payments to the counties after 1926 could be made only to the extent that there were funds in the account. Land sales again proved minimal with the result that little revenue was forthcoming.

Accordingly, in 1937 Congress enacted legislation which replaced (a) the policy of disposal of the lands as soon as possible with one of retention and conservation, and (b) the tax equivalency payments with a revenue sharing formula.[9]

---

[8] 13 Comp. Gen. 77 (1933).

[9] The history of the O&C lands is also well summarized in Payments in Lieu of Taxes and Shared Revenues, A Study Commission Report, Commission on Intergovernmental Relations 116-120 (1955).

II. Provision for Payments and its Administration

A. Pertinent text of the statute

43 U.S.C. §§ 1181f, g (1964) provide as follows:

> "§ 1181f. On and after March 1, 1938, all moneys deposited in the Treasury of the United States in the special fund designated the "Oregon and California land-grant fund" shall be distributed annually as follows:
>
> "(a) Fifty per centum to the counties in which the lands revested under the Act of June 9, 1916 (39 Stat. 218), are situated, to be payable on or after June 30, 1938, and each year thereafter to each of said counties in the proportion that the total assessed value of the Oregon and California grant lands in each of said counties for the year 1915 bear to the total assessed value of all of said lands in the State of Oregon for said year, such moneys to be used as other county funds: Provided, however, That for the purposes of this subsection the portion of the said revested Oregon and California railroad grant lands in each of said counties which was not assessed for the year 1915 shall be deemed to have been assessed at the average assessed value of the grant lands in said county.
>
> "(b) Twenty-five per centum to said counties as money in lieu of taxes accrued or which shall accrue to them prior to March 1, 1938, under the provisions of the Act of July 13, 1926 (44. Stat. 915), and which taxes are unpaid on said date, such moneys to be paid to said counties severally by the Secretary of the Treasury of the United States, upon certification by the Secretary of the Interior, until such tax indebtedness as shall have accrued prior to March 1, 1938, is extinguished.
>
> "From and after payment of the above accrued taxes said 25 percentum shall be accredited annually to the general fund in the Treasury of the United States until all reimbursable charges against the Oregon and California land-grant fund owing to the general fund in the

"Treasury have been paid: Provided, That if for any year after the extinguishment of the tax indebtedness accruing to the counties prior to March 1, 1938, under the provisions of Forty-fourth Statutes, page 915, the total amount payable under subsection (a) of this section is less than 78 per centum of the aggregate amount of tax claims which accrued to said counties under said Act for the year 1934, there shall be additionally payable for such year such portion of said 25 per centum (but not in excess of three-fifths of said 25 per centum), as may be necessary to make up the deficiency. When the general fund in the Treasury has been fully reimbursed for the expenditures which were made charges against the Oregon and California land-grant fund said 25 per centum shall be paid annually, on or after June 30, to the several counties in the manner provided in subsection (a) of this section.

"(c) Twenty-five per centum to be available for the administration of sections 1181a-1181f of this title, in such annual amounts as the Congress shall from time to time determine. Any part of such per centum not used for administrative purposes shall be covered into the general fund of the Treasury of the United States: Provided, That moneys covered into the Treasury in such manner shall be used to satisfy the reimbursable charges against the Oregon and California land-grant fund mentioned in subsection (b) of this section so long as any such charges shall exist.

"§ 1181g. Those unselected and unpatented odd-numbered sections within the indemnity limits of the Oregon and California Railroad land grant authorized by the Act of July 25, 1866 (14 Stat. 47), and for which payment was made by the United States to such railroad or its successors in interest under the Act of June 9, 1916 (39 Stat. 218), pursuant to the decree in the case of United States against Oregon and California R. R. Co. (8 F. (2d) 645), which were included within the boundaries of national forests by proclamations of the President of the United States issued under the dates of June 17, 1892, September 28, 1893, October 5, 1906, January 25, 1907, March 1, 1907, "and March 2, 1907, are declared to be revested Oregon and California railroad grant lands; and said lands shall continue to be administered as national-forest lands by the Secretary of Agriculture subject to all laws, rules, and regulations applicable to the national forests: Provided, That all revenues hereafter derived from said lands and those revenues heretofore derived from such lands and placed in special deposit by agreement between the Secretary of Agriculture and the Secretary of the Interior shall be disposed of in accordance with the provisions of section 1181f of this title and said lands shall not hereafter be subject to the provisions of any other laws or parts of laws which otherwise prescribe the disposal or distribution of receipts from lands of the United States, except that none of the provisions of sections 1181f(a), 1181g-1181j of this title shall affect revenues heretofore distributed. No part of said lands or the resources thereof shall be subject to exchange under the provisions of sections 1181f(a) and 1181g-1181j of this title or any other law applicable to national forest lands or otherwise."

B. Congressional Rationale for Payments

The original Congressional intent in making payments under the O&C legislation indicates that they were to compensate the O&C counties for the tax revenues lost by the reacquisition of the lands. This is clear from the following extract from the Senate report dealing with the 1926 amendments to the original legislation quoted below:

> "Continued and willful violation by the railroad company of the settler's clause resulted in the commencement of a suit by the United States to declare a forfeiture of the unsold portion of the grant. The Supreme Court of the United States refused to declare a forfeiture, but held that the settler's clause was a continuing, enforceable covenant and that Congress could, by appropriate legislation, require performance.
>
> The Congress thereupon enacted the Chamberlain-Ferris Act, revesting in the United States title to the unsold portion of the grant and providing for disposition thereof. This act provided, among other things, for the payment to the State of Oregon and to the counties in which the grant lands are situated of 50 per cent of the proceeds of the sale of the grant lands and the timber thereon, to be in lieu of taxes which would have accrued had the lands remained in private ownership...."[9a]

The rationale of the final revenue sharing formula adopted in 1937 must be viewed against the historical background of the O&C lands themselves up to the time the statute was enacted. Revenues from the O&C lands had been insufficient to make the tax-equivalency payments called for by the 1926 legislation. Congress recognized the financial plight of the O&C counties and at the same time did not wish to make tax-equivalent payments to the counties from general appropriations. The Congress, in short, wanted any in lieu of taxes paid to the counties to be financed from revenues produced in the lands to which the payments related. The counties, on the other hand, preferred a tax-equivalency scheme fearing that the O&C lands would never produce sufficient revenues to provide for payments to them. The counties' position is illustrated below:

[9a] S. Rep. No. 790, 69th Cong. 1st Sess. 1-2 (1926).

> "Does this bill carry the same degree of certainty as the Standfield Act?
>
> "We submit that it does not. The Standfield Act makes the claim in lieu of taxes an exact measuring stick, by which the claim may be reflected in annual budgets as an anticipatory payment and the other taxes reduced accordingly; it makes the whole of the receipts available for payment of the claims if necessary; it guarantees ultimate payment by an asset having a value estimated at from $30,000,000 to $50,000,000. H.R. 5858, on the other hand, cuts the current receipts in half and leaves no yardstick for anticipatory measurement. Nor under it will there be any reasonably accurate measurement possible for years, as the new sustained yield plan must be first worked out and then sales must be had for sufficient time so that an average may be had before any anticipation can be safely set up. Unless the annual payments can be anticipated in the tax budgets the value to the distressed taxpayer cannot be at all certain."[10]

---

[10] Hearings on H.R. 5858 before the House Committee on Public Lands, 75th Cong., 1st Sess. 254 (1937). (Statement Summarizing the Position of the Land Grant Counties.)

The underlying Congressional rationale for the adoption of the revenue sharing formula may be seen from the extract from the House report on the bill set forth below. The extract also gives an excellent summary of the history of the O&C lands and of the legislation relating to them. It reads:

"TITLE II

"The Revestment Act of June 9, 1916 (39 Stat. 219), provides that all proceeds from the revested Oregon and California Railroad grant lands shall be paid into a special fund designated as the "Oregon and California land grant fund." Title II of H.R. 7618 continues the use of this special fund.

"The purposes of title II are threefold:

"1. To require the costs of administering the lands to be borne by the proceeds from the lands instead of by appropriations from the general fund of the Federal Treasury as at present.

"2. To provide that sums advanced by the Federal Treasury to the Oregon and California land-grant fund be repaid from the proceeds of the lands.

"3. To reduce the payments to the Oregon and California land-grant counties to the extent necessary to carry out purposes 1 and 2.

"Costs of administration to be paid from proceeds

"Under the existing law, the costs of administering these lands are paid from the Federal Treasury, such costs exceeding $100,000 annually. H.R. 7618 provides that 25 percent of the proceeds of these lands shall be available for administration costs, which amount the Department of the Interior estimates will be adequate for that purpose. Thus, the financial burden of administration is shifted from the Federal Treasury to the lands themselves.

"Reimbursement of the Federal Treasury

" Under the terms of the act of June 9, 1916 (39 Stat. 219), and the act of July 13, 1926 (44 Stat. 219), the United States Federal Treasury advanced to the Oregon and California land-grant fund the sum of approximately $8,500,000, which "amount has never been repaid to the Federal Treasury for the reason that the act of 1926 pledged the proceeds of the fund to pay the land-grant counties sums equal to the amount of taxes which the lands would have produced had they remained in private ownership. H.R. 7618 provides for the repayment of these advancements from the proceeds of the lands by diverting from 10 to 25 percent of the annual income (depending on the amount of sales of timber in such year) to the Treasury for this purpose. Thus, the Federal Treasury will be reimbursed from the lands themselves.

"Payments to counties

"The original Revestment Act of June 9, 1916 (39 Stat. 219), provides that 50 percent of the proceeds from the lands shall be paid to the State and counties annually. This bill devotes 50 percent of the proceeds to the counties and nothing to the State.

"Under the terms of the act of July 13, 1926, the land-grant counties submit annual claims for the equivalent of the taxes which would have accrued from these lands had they remained in private ownership, which claims must be paid from the proceeds of the lands; such proceeds have in the past been insufficient to meet these claims, the unpaid portions of the claims now being a charge against future proceeds. Hence H.R. 7618 also provides for the payment of presently accrued claims, over a period of years, from the proceeds of the lands. But hereafter, no additional tax claims will accrue to such counties as under present law, as the bill provides that their rights shall be limited to a fixed percentage of the proceeds from the lands.

"Further, the bill would provide an additional 15 percent for the counties, or such part thereof as may be necessary, if the 50 percent received by the counties is less than 78 percent of the aggregate amount of tax claims which accrued to such counties under the act of July 13, 1926, for the year 1934, 1934 being the last year for which tax claims have been submitted by the counties.

> "To summarize, the counties are to be paid only from the income from the lands. No such payment may be made from the general fund of the Treasury. Until accrued tax claims have been paid (which will take approximately 6 years) the counties will receive 75 percent of the income. Thereafter, they will receive from 50 to 65 percent depending on the amount of annual receipts.
>
> "Conclusion
>
> "This bill is intended as a solution of the problems created by the Revestment Act of June 9, 1916, and the act of July 13, 1926. The timber assets of these lands, which were there directed to be destroyed by early liquidation, are here required to be conserved and perpetuated. The deficit in the Federal Treasury there created, is here reimbursed. The payments to the counties, which there took the whole of the proceeds and created a deficit in the fund, are here limited to a percentage of the proceeds. It establishes a vast, self-sustaining timber reservoir for the future, an asset to the Nation and the State of Oregon alike. All of which is financed by the lands themselves."[11]

---

[11] H.R. Rep No. 1119, 75th Cong., 1st Sess. 2-3 (1937). In fact the counties became eligible for the full 75% of the revenues in 1952. World War II brought a revival of the economy and with it a substantial rise in timber prices. The results were that the back taxes were paid to the counties and all charges against the O&C land-grant fund were paid off sooner than either the counties or the Congress had expected. The counties have not received the full 75% of revenues, however, since, beginning in fiscal 1953, the Congress has annually provided that the cost of access roads to the O&C lands was to be deducted from the extra 25% of revenues available for distribution (66 Stat. 465 (1952)). Every appropriation bill for the Department of Interior since 1952 has contained a similar provision (*e.g.*, 69 Stat. 142 (1955); 78 Stat 273 (1964)) and more recent acts have required the deduction of the entire 25% payable to the counties for access roads and other improvements (*e.g.*, 79 Stat. 174 (1965); 81 Stat. 59 (1967)). The result is that the counties receive only 50% of the gross revenues realized from the revested O&C lands. See *Public Land Statistics, 1966*, p. 177, n.3.

C. Administration

The O&C lands to which the statute applies comprise some 7,000,000 acres situated in Western Oregon and are under the jurisdiction of the Department of the Interior.[12] The Secretary of the Interior has delegated authority to manage these lands to the Bureau of Land Management.[13] The revenue sharing provision also applies to some 460,000 acres of "controverted lands", i.e., revested lands with respect to which indemnity payments were made to the railroad company and which are included within the borders of National Forests administered by the Forest Service, and certain special O&C lands also administered by the Forest Service.[14] The "controverted" lands were the subject of a long standing jurisdictional dispute between the Departments of Agriculture and the Interior. In 1954 the Congress enacted legislation which gave O&C land status to these lands but provided that they be administered by the Forest Service.[15]

No regulations concerning the distribution and selection of revenues have been promulgated by the Interior Department. However, Part 1373 of the BLM Manual contains detailed accurate instructions to the distribution of revenues and the Bureau of Land Management has extensive manuals and guidelines on timber appraisal.

12/ 43 U.S.C. § 1151 (1964); Public Land Statistics 1966, p. 128.

13/ 43 C.F.R. § 5070 0-3 (1967).

14/ Public Land Statistics 1966, p. 128.

15/ 60 Stat. 270 (1954), The Senate Report dealing with this legislation briefly summarizes the jurisdiction dispute:

> "The 1916 act provided for administration of the revested lands by the Department of the Interior, for getting the lands into private ownership, for reimbursement of the counties for their tax loss, and for distribution of future receipts.
>
> "On August 28, 1937, the Congress enacted a statute providing for a different disposition of receipts and administration of the lands in the interest of conservation. Thereafter a question arose as to the status of the unpatented portion of the revested grant; namely, was the Department of Agriculture to administer these lands under National Forest laws, or was the Department of the Interior to administer them under the 1916 act, as amended?
>
> "The bill, as amended, provides for continued administration of the lands by the Department of Agriculture with accounting of funds heretofore or herefter received to be the same as for other O&C land receipts." S. Rep. No. 1314, 83d Cong., 2d Sess. 2 (1954).

(Note continued)

D. Lands for which payments are made

The lands to which the payments relate are some 7,500,000 acres of public domain land situated in eighteen counties in Western Oregon which had been granted to the Oregon and California Railroad Company and title to which was subsequently retaken by the United States.

15/ Continued

The hearings on the legislation also indicated the long-standing nature of the jurisdictional dispute:

> "In the earlier years, back as far even as 1915, there was a dispute between the Departments of Agriculture and Interior as to which should administer the revested lands.
>
> "Agriculture, through the Forest Service, made a strong request for all of the lands to be placed in National Forests. Instead of that, administration of the revested lands was placed in the Interior Department.
>
> "In 1937, a like request was made by the Agriculture Department, and the Department, through the chief forester of the United States Forest Service, made the claim that the lands adjoined national forest lands, that they were timberlands, that the Forest Service was more competent, more experienced, to administer timberlands, and again asked that they be placed in the national forest. Again the lands were left in the administration of the Interior Department." Hearings on S.2225 before the Senate Committee on Interior and Insular Affairs, 83d Cong., 2d Sess. 3-4 (1954) (Statement of Senator Gordon).

E. Recipients of payments and restrictions on their use

The statute provides that "annual" revenue sharing payments are to be made to the eighteen counties in Western Oregon containing O&C lands from fifty percent of the revenues realized from such lands.[16] The payments are divided among the counties according to the proportion which the assessed value of O&C lands in each county bears to the total assessed value of all O&C lands in Oregon. Payments are made as soon after the close of the fiscal year as practicable.[16a]

Revenues from the O&C lands are deposited in the United States Treasury in a receipts account. After calculating amounts due each county, BLM submits a voucher to the Treasury which then draws checks payable to the treasuries of the counties included. The checks are then sent by BLM to the counties accompanied by a statement explaining the nature of the payments. The statute imposes no restrictions as to the uses to which the counties may put the payments.

---

[16] 75% of the revenues less 25% annually appropriated by the Congress for access roads and improvements.

[16a] Under an agreement with the O&C counties, the payments are made in two installments: One in July with respect to receipts received through the preceding April, the second as soon as practicable after the close of the fiscal year.

F. Calculation of payments

1. Proportional payments - The statute requires that the payments to the eighteen O&C counties be made out of seventy-five percent of the revenues produced by such lands in the proportion that the assessed value of such lands in each county bears to the total of all O&C lands as of 1915. In 1954 BLM, in cooperation with local officials, assessed all the O&C lands, including those which had not been previously assessed and the "controverted" lands, using the 1915 average value of lands which had been assessed. The average value was applied to the total O&C acreage per county to arrive at the value of O&C lands per county. Each county's total was applied to the total value of O&C lands arrived at by totalling the county valuations. From these figures the percent of the shared revenues to which each county is entitled was calculated. There have been some subsequent adjustments, but the percentages established remain more or less constant. The work papers providing the back-up material for BLM's report fill four or five cartons and the BLM report does not contain a statement of the methodology employed in making the assessment. The re-evaluation was necessitated by legislation enacted in 1954 which characterized certain lands known as "controverted" lands, i.e., those revested O&C lands with respect to which indemnity payments were made to the railroad company and which are included within National Forests as O&C lands.[17] These lands are administered by the Forest Service, but payments are made as if they were O&C lands. The Forest Service collects the revenues and deposits them in the appropriate O&C receipt account in the Treasury, where they become mingled with the other revenues from O&C lands. BLM makes the payments to the counties as described in E above.

According to BLM and Forest Service representatives, their method of payment, including the proportional basis of such payments, has been audited and approved by the General Accounting Office.[18]

---

[17] See text and footnote 15, supra. The 1954 legislation also provided for the exchange of administrative jurisdiction of O&C lands lying within the boundaries of National Forests or within two miles of such boundaries and National Forest lands in order that both types of land might be "blocked up" for better administration. 68 Stat. 270-71 (1954).

[18] Interview with Arnold Petty, Chief, Division of Financial Management, Bureau of Land Management, March 29, 1968. Mr. Petty also supplied much of the background information concerning the method by which BLM makes its payments. Telephone interview with Glenn C. Todd, Director, Budget and Finance Section, Forest Service, March 27, 1968.

2. Timber sales - Revenues from the O&C lands are almost wholly derived from sales of timber to private parties. Sales are made on the basis of advertised competitive bidding. The price at which timber is sold is based on the end product value of the timber determined under normal market condition. From this price is deducted logging costs (including slash removal costs); milling costs and profit and risk to the purchaser. In determining costs, the Bureau of Land Management, like the Forest Service, employs the concept of the operation at average efficiency. The end amount is the appraised value or stumpage value. It is this value or price which is the minimum bid which will be accepted by BLM in a timber sale contract, and it is on this amount or the price actually bid for the timber, against which the fifty per cent is applied for the purposes of computing the amount to be shared with the eighteen O&C counties.

This particular practice is not specifically covered in the revenue sharing provisions of the O&C act. However the Secretary of Interior has general authority to promulgate regulations pertaining to the O&C lands,[19] and sales of timber must be at "reasonable prices on a normal market."[20]

Pursuant to this authority, the Bureau of Land Management has issued extensive guidelines for determining end product values, logging costs, slash removal costs,etc., and for making appraisals of timber.[21]

---

[19] 43 U.S.C. § 1181e (1964).

[20] 43 U.S.C. § 1181a (1964).

[21] See Logging Costs, Schedule 15, U.S. Dept. of Interior, Bureau of Land Management, Portland Service Center, May 15, 1967, and U.S. Dept. of Interior, Bureau of Land Management Instruction Memorandum 67-252, June 16, 1967, and Change 1 thereto, July 20, 1967. Both of these publications apply to the O&C lands.

The Bureau of Land Management and the Forest Service are currently working together to review and conform their timber appraisal practices. It is expected that these revisions will become effective July 1, 1968. The appraisal practices described in the text above are those currently in use.

Where roads are already in place, such as may have been built by the Bureau of Land Management with the twenty-five percent of the proceeds annually appropriated for access roads, improvements, etc., the appraised value of timber for sale purposes is concomitantly greater because road building costs are absent or are less. Consequently, the gross proceeds realized from these sales, fifty percent of which is shared with the O&C counties, is also greater.

Unlike the Forest Service, the Bureau of Land Management does not permit a purchaser of O&C timber to make an optional in lieu payment to cover the costs of slash removal. Such costs are always included in BLM timber sale contracts and form a part of logging costs.

Again, unlike the Forest Service, if the BLM sells finished or semi-finished forest products, such as logs, and receives a higher price for such products than for a like amount of trees standing in place, gross proceeds would be the amount actually received, fifty percent of which would go to the counties. No computation would be made for the in place value of a similar amount of uncut timber without access roads as the basis to determine the amount of receipts to be remitted to the counties. (See Digest LB) This is because, with respect to sales of timber from O&C lands the statute does not require that the uncut value of timber be used in determining the amount of revenues to be shared.[22]

The computation of gross proceeds realized from timber sales on the "controverted" lands which are under Forest Service Management are determined under Forest Service procedures as described in Digest LB.

22/ The foregoing material is based on the cited sources and supplemented and confirmed in an interview on March 7, 1968 with Mr. Rodney O. Fety, Assistant Chief of the Forestry Staff, BLM.

G. Problem areas or matters suggested for consideration by the Commission

The O&C lands are subject to the jurisdiction of two Government Departments which necessitates interdepartmental transfers of receipts. Similar inter-departmental transfers are found with respect to mineral leases on acquired lands. (See Digest LR.) The whole question of different revenue sharing formulas applicable to the same lands, depending on the type of revenue produced, and the problem of multiple jurisdiction over the same lands is an area which needs further study. The existence of overlapping jurisdiction and revenue sharing formulae inevitably complicates the whole system of making compensation payments to State and local governments with respect to publicly owned tax free property.

FEDERAL STATUTE DIGEST NO. LE

Act of May 24, 1939 (Reconveyed Coos Bay Wagon Road Grant Lands 53 Stat. 753 (1939))

I. Background

The histories of the Coos Bay Wagon Road and the Oregon and California land grants (hereinafter referred to as the "CBWR" and "O&C" lands respectively) are very similar.[1] Under the Act of March 3, 1869[2] the Southern Oregon Company received a grant of a little over one hundred thousand acres of public domain land from the Federal government to help finance construction of a road from Coos Bay to Roseberg, Oregon. The Coos Bay legislation provided that the land could be sold only to actual settlers in quantities not greater than one quarter section per purchaser and at a price not exceeding $2.50 an acre.

After Congressional investigation disclosed wholesale violations of the statutory requirements, legislation was enacted in 1919 reconveying the ninety-three thousand acres which had not been sold to the Federal government[3] and establishing the following priorities: (1) the Southern Oregon Company was to receive $2.50 an acre for all the reconveyed land and (2) the United States Treasury was to be reimbursed for the back due taxes it had paid the counties after 1915 when it became apparent that the land was to be removed from the tax rolls and returned to the Federal government.[4] After these priorities had been met, Coos and Douglas Counties were to receive twenty-five per cent of the gross revenues produced by the lands to be used for schools, roads, highways, bridges, and port districts. These payments were to compensate the counties for for the revenues they had lost from the removal of the CBWR lands from their tax rolls.[5] Due to the low level of revenues, the counties did not receive their first payment until 1926. The year 1926 was also the year of the Standfield Act[6] which authorized payment of past and future tax claims on the O&C lands, but made no provision for the CBWR lands, possibly because these lands were beginning to receive payments under the existing reconveyance legislation.

---

[1] For the history and administration of the O&C lands, see Digest LF.

[2] 15 Stat. 340 (1869).

[3] 40 Stat. 1179 (1919).

[4] The 1919 legislation provided for payment of the back due taxes to the counties on the CBWR lands.

[5] "These lands have been on the tax roll of Coos County for a great many years, and it would be a great hardship on the county to deprive her of the revenue derived therefrom, unless it is returned in some such way as is proposed by the pending bill. The same applies in some measure to Douglas County, but the greater proportion of the lands are situated, as you know, in the county of Coos...." H. R. Rep. No. 687, 65th Cong., 2d Sess. 15 (1918) (excerpt from letter of George M. Brown, Attorney General of Oregon).

[6] 44 Stat. 915 (1926).

When, in 1937, Congress again amended the O&C Revestment Act it overlooked the distribution of revenues produced on the CBWR lands.[7/] To remedy this oversight, Congress enacted additional legislation in 1939.[8/] This legislation was applicable only to the CBWR lands and provided for a different revenue sharing formula than that used in the 1937 legislation relating to the O&C lands.

II. Provision for Payments and its Administration

A. Pertinent text of the statute

Sections 1-4 of the Act provide as follows:

> "Sec. 1. . . . [N]ot to exceed 75 per centum of the receipts derived in any one year from the Coos Bay Wagon Road grant lands in Oregon and deposited in the special fund in the Treasury created by the Act of February 26, 1919 (40 Stat. 1179), and designated "The Coos Bay Wagon Road grant fund" shall be paid annually, in lieu of taxes, by the Secretary of the Treasury, upon certification by the Secretary of the Interior, to the treasurers of Coos and Douglas Counties according to the ratio that the total assessed valuation of the reconveyed Coos Bay Wagon Road grant lands, belonging to the United States, in each of said counties bears to the total assessed valuation of all said lands in those counties, to be used for the purposes mentioned in said Act: . . . Provided further, That prior to making any payment under this authorization an appraisal of the land and timber thereon shall be made, within six months after the passage of this Act, by a committee to consist of a representative of the Secretary of Interior, one representative for the two counties interested, and a third person satisfactory to the Secretary of Interior and the county officials but who shall not be an employee of the United States nor a resident of, nor a property owner in either Coos or Douglas County. Upon appraisal thereof the land and timber thereon shall be assessed as are other similar properties within the respective counties, and payments in lieu of taxes shall be computed by applying the same rates of taxation as are applied to privately owned property of similar character in such counties."

[7/] S. Rep. No. 371, 76th Cong., 1st Sess. 3 (1939).

[8/] 53 Stat. 753 (1939). See Digest No. LD for a discussion on the 1957 legistation applicable to the O&C lands.

"Sec. 2. Appraisals of the land and timber thereon shall be made, in the manner prescribed in section 1 hereof, not less frequently than once in each ten-year period, and the amounts due hereunder in any year shall be computed as specified in section 1 of this Act upon the basis of the last appraisement. The expenses of making the appraisements provided for in this Act shall be paid by the Secretary of the Treasury upon certification by the Secretary of the Interior, from that portion of the receipts derived from such lands and timber payable to the counties and shall be deducted from any amount due said counties.

"Sec. 3. If, during any one year, 75 per centum of the receipts are insufficient fully to meet the payments due the counties hereunder, the Secretary of the Treasury, upon certification by the Secretary of the Interior, may pay an additional sum from any surplus of 75 per centum of prior year receipts: Provided, however, That in no event shall the aggregate of payments during any ten-year period commencing with the period beginning July 1, 1940, exceed 75 per centum of the receipts deposited in the Treasury to the credit of the Coos Bay Wagon Road grant fund for such period: Provided further, That at the end of each ten-year period, any balance of the 75 per centum not required for payments to the counties shall be covered into the general fund of the Treasury of the United States.

"Sec. 4. Not to exceed 25 per centum of the annual receipts shall be available, in such amounts as the Congress shall from time to time appropriate for the administration of the Act of August 28, 1937 (50 Stat. 874), insofar as it applies to the Coos Bay Wagon Road grant lands. Any balance not used for administrative purposes shall be covered into the general fund of the Treasury of the United States."[9]

---

[9] 53 Stat. 753-4 (1939).

B. Congressional rationale for payments

The legislative history relating to the 1939 legislation is extremely meager. From the extract of the Senate Committee Report quoted below, it appears clear, however, that its purpose was to equalize the treatment accorded to the two CBWR counties (which are also O&C counties) with the eighteen O&C counties, and to rectify the oversight of not including the CBWR lands in the 1937 legislation applicable to the O&C lands.

In fact, the treatment accorded to the two CBWR counties differs from that accorded to the eighteen O&C counties since CBWR counties receive tax equivalency payments out of revenues produced from the lands to which the payments relate while the O&C counties are subject to a straight revenue sharing formula. It seems logical to assume that,since the two CBWR counties are also O&C counties, they would have preferred straight tax equivalency payments providing stable revenues to fluctuating payments based on revenue.[10/] Conversely, the Congress did not wish to be obligated to make such payments unless financed out of the revenue which the lands themselves produce. The end product was the resulting legislative compromise which provides for in lieu of tax paymants to be made out of revenues, but also provides that where revenues for any year are insufficient to make the tax equivalency payments, excess revenues from prior years may be used to make up the payments during any one ten year period. The background and purpose of the legislation is well summarized in the following extract from the Senate report on the bill:

> "Statement of Facts
>
> "In 1937, at the request of the Secretary of the Interior, legislation was passed providing for the administration and operation upon a sustained-yield basis of the revested and reconveyed Oregon & California Railroad grant lands and the Coos Bay Wagon Road grant lands in Oregon (Public, No. 405, 75th Cong.; Act of August 28, 1937).
>
> "The purpose of this legislation, as announced by the Secretary of the Interior, was to stop "waste and destruction by providing necessary authority for the sale of the timber and the use of the land in conformity with generally recognized principles of conservation," and to "place the administration of these lands on a sound financial basis and at the same time to protect the interest of all concerned." It is to be noted that these objectives are being achieved in a manner highly satisfactory to both the Government and the local interests in all respects, save only as to that which this bill seeks to to correct . . . .

[10/] No hearings have been printed on this CBWR legislation so that original evidence of the CBWR counties' preference for tax equivalency payments is lacking.

> "Provision was made in this legislation in 1937 for distribution to the counties in which the lands are located on a percentage of the receipts derived from the lands above the amount retained for administrative costs, insofar as the Oregon and California railroad lands are concerned. Obviously, through oversight, no like provision was made for the Coos Bay Wagon Road grant lands.
>
> "The purpose of . . . [this bill] is to correct this oversight and place all these lands on substantially the same basis, both as to administration and distribution of proceeds." 11/

C. Administration

The CBWR lands are administered by the Bureau of Land Management, Department of the Interior. There are no regulations pertaining to the revenue sharing provisions of the statute. The procedures and guidelines for making such payments are contained in Part 1373 of the BLM Manual. The information contained herein is based on an examination of the manual and personal and telephone interviews with the personnel of the Bureau responsible for the administration of the in lieu tax payments.12/

D. Lands for which payments are made

The statute provides for annual in lieu of tax payments to be made to Coos and Douglas Counties, Oregon with respect to some seventy-five thousand acres of lands granted to the Southern Oregon Company, title to which was subsequently reconveyed to the United States.13/

E. Recipients of payments and restrictions on their use

The recipients of the payments are Coos and Douglas Counties, Oregon. The statute provides for "annual" payments which are in fact made after presentation of preliminary and final tax bills by the two counties. The payments must be used for the purposes specified in the 1919 legislation i.e. "for common schools, roads, highways, bridges, and port districts" to be apportioned as the county courts determine.14/ Revenues from the CBWR lands are deposited as collected by the Bureau of Land Management in a receipts account of the United States Treasury. Upon presentation of the tax bills from the two counties, the Bureau of Land Management verifies the bill, and then prepares

---

11/ S. Rep. No. 371, 76th Cong., 1st Sess. 3 (1939).

12/ Numerous interviews were held with Arnold Petty, Chief, Division of Financial Management, Bureau of Land Management.

13/ Public Land Statistics 1966, p. 128.

14/ 40 Stat. 1179, 1181 (1919).

a voucher for the Treasury. The Treasury transfers the amount specified in the voucher to a disbursement account and draws the checks to the order of the county treasurers of the two counties which are then forwarded to them by the Bureau accompanied by a statement as to their purpose. The payments are made in two installments corresponding to the preliminary and final tax bills submitted by the counties.

F. Calculation of payments

The statute contains specific provisions concerning the amount of tax payments. It authorizes payment of a tax equivalent out of seventy-five per cent of the revenue produced by the lands. The money is divided according to the proportion which the assessed valuation of CBWR lands in each county has to the total CBWR lands in both counties. The statute also provides that there shall be an appraisal committee of three--one representing the Secretary of the Interior, one representing the two counties, and a third satisfactory to both who is not an employee of the United States nor a resident or property holder in either county. The committee reappraises the CBWR land every ten years using State appraisal procedures with minor variations.[15/] These appraisals are kept current using regulations issued by the Bureau of Land Management. The statute requires that the tax equivalent payments be computed by applying the same rates of taxation as are applied to privately owned property of similar character in each county and that the cost of appraisal is to be deducted from the amounts due to the counties. In Oregon ad valorem taxes on forest lands are composed of two parts; one part being based on the "true cash value" of timber in place, the second part being based on the amount of timber actually harvested during the year. The payments made to the counties are, accordingly, composed of two parts. Billings are submitted annually by each county assessor based on the appraisal data furnished to the assessor by the CBWR appraisal committee.[16/] The amount of taxes is then verified by the Bureau of Land Management which makes the payments in the manner described in paragraph E above.

The valuation phase of the appraisal entails the application of the proper true cash values for timber and land, which values are compiled by the Oregon State Tax Commission for each county in Oregon. These values are applied to the volume and type class data to provide the base assessed valuations for computation of in lieu-tax payments for the CBWR lands. These valuations are summarized by common tax millage levy areas as a control for keeping the assessed valuations current and to check the accuracy of the annual in lieu-tax payment computed by each county assessor.[17/]

[15/] Letter with enclosures dated December 13, 1967 from William E. Sankela, Member CBWR Appraisal Committee, to EBSMC. EBSMC PLLRC File No. 227.

[16/] Ibid.

[17/] Ibid.

The statute provides that, if in any one year, seventy-five per cent of the receipts are insufficient to meet the tax payments due the county the Secretary of the Interior may pay an additional sum from any surplus of the seventy-five per cent received in prior years. In no event, however, shall the aggregate payments during the ten-year periods commencing with July 1, 1940 exceed seventy-five per cent of the receipts deposited in the Treasury to the credit of the CBWR fund. At the end of any ten-year period, any balance of the seventy-five per cent not required for payment to the counties is transferred into the general fund of the Treasury. According to the Bureau of Land Management, thus far seventy-five per cent of the receipts have been sufficient to meet all the annual in lieu tax payments.[18] The final twenty-five per cent is available, when appropriated, for the administration of the lands.

Revenues from the CBWR lands are almost entirely derived from timber sales. The method and manner of determining the amounts received on timber sales and the conditions attendant on such sales is the same as that employed for O&C lands which is described at length in Digest LD.

It should be remembered, however, that in lieu of tax payments made to Coos and Douglas Counties with respect to the CBWR lands are out of the revenues produced from such lands and not a percentage of such revenues.

G. Problem areas

Like the payments made with respect to the O&C lands the tax equivalency payments made on the CBWR lands are different from those normally made to States and counties from forest lands. In addition, the O&C payments differ from the CBWR payments. Consideration should be given by the Commission to establishing a uniform system of payments on all forest lands owned by the United States whether it be public domain or not. At the very least the O&C and CBWR formulas might be brought into conformity with one another.

---

[18] The Act provides that, with respect to Douglas County, until certain amounts had been paid to the U.S. Treasury, only 50% of the revenues were to be available for in lieu tax payments to that county. The Treasury has been fully reimbursed and the 75% formula is now in effect for both counties.

FEDERAL STATUTE DIGEST NO. LF

Act of February 25, 1920 (Mineral Leasing Act)
41 Stat. 437,450, as amended (1920), 30 U.S.C. § 191 (1964)

I. Background

The policy of withdrawal of public lands from entry and use which was first applied to National Forests in the late nineteenth century was soon extended to the mineral bearing lands of the United States, particularly oil and coal bearing lands. The results of this policy, largely fostered by conservation interests in the East, caused considerable uncertainties in the extractive industries of the West. In addition, the Western States actively opposed the withdrawal policy on the same grounds that they had opposed the creation of the National Forests, namely, that they would suffer revenue losses due to the tax exempt status of Federal lands no longer available for disposal.

Essentially, the Mineral Leasing Act of 1920 was a compromise between conservation interests both within and without the Government and the interests and demands of the Western States where most of the mineral bearing lands were located. The Act provided that certain mineral bearing lands would no longer be available for sale, but that leasing rights to such lands would be granted to private persons. The Act also provided for a sharing of the revenues realized from rents, royalties and bonuses from mineral leases to be shared with the States to compensate them for the loss of revenues which would otherwise accrue to them if the lands were in private ownership.1/

The original legislation provided that thirty-seven and one-half per cent of the revenues realized from mineral leases were to be shared with the States in which the lands produced the revenues. Payments were to be made annually to be used for public schools and roads. In 1950 the Act was amended to provide for bi-annual payments and again in 1957 to provide that ninety per cent of the proceeds realized from mineral leases in Alaska will be shared with that State.2/

1/ An excellent summary of the history leading up to the enactment of the Mineral Leasing Act of 1920 and the reasons for its enactment may be found in 58 Cong. Rec. 7772-74 (1919) (Memorandum of Representative Mondell). See also Hibbard, Benjamin H , A History of the Public Land Policies, University of Wisconsin Press, Madison, 1965 (Copyright 1924), pp. 17-28.

In 1917 the Congress enacted a Mineral Leasing Act for potash (40 Stat. 297 (1917)). Section 10 of that Act provided that royalties, etc., should be paid into the Reclamation Fund, also, after the use of this money for the construction of reclamation projects and upon the return of any of it to the Fund, 50% of the return be paid to the State for schools and roads. The Mineral Leasing Act of 1920 established the general terms and conditions of mineral leases, and accordingly, the 1917 Act was repealed in 1927 (44 Stat. 1057) and kept in effect existing leases. By 1948 there was only one lease in effect under the 1917 legislation, and accordingly Congress enacted legislation applying the distribution formula of the Mineral Leasing Act of 1920 to the one outstanding lease under the 1917 legislation [30 U.S.C. § 286 (1964)].

2/ 37 1/2% must be used for schools and roads, the remaining 52 1/2% is not subject to restrictions.

II. Provision for Payments and Administration

A. Pertinent text of the statute

30 U.S.C. § 191 (1964) provides in part as follows:

> "All money received from sales, bonuses, royalties, and rentals of public lands under the provisions of section 181-184, 185-188, 189-192, 193, 194, 201, 202-209, 211-214, 223, 224-226, 226-2, 227-229a, 241, 251, and 261-263 of this title shall be paid into the Treasury of the United States; 37 1/2 per centum thereof shall be paid by the Secretary of the Treasury as soon as practicable after December 31 and June 30 of each year to the State within the boundaries of which the leased lands or deposits are or were located; said moneys to be used by such State or subdivisions thereof for the construction and maintenance of public roads or for the support of public schools or other public educational institutions, as the legislature of the State may direct; and, excepting those from Alaska, 52 1/2 per centum thereof shall be paid into, reserved and appropriated, as a part of the reclamation fund created by sections 372, 373, 383, 391, 411, 416, 419, 421, 431, 432, 434, 439, 461, 491, and 498 of Title 43, and of those from Alaska, 52 1/2 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof; Provided, That all moneys which may accrue to the United States under the provisions of sections 181-184, 185-188, 189-192, 193, 194, 201, 202-209, 211-214, 223, 224-226, 226-2, 227-229a, 241, 251, and 261-263 of this title from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts,".... All moneys....not otherwise disposed of by this Section shall be credited to miscellaneous receipts."

B. Congressional Rationale for Payments

The legislative history of the revenue sharing provision of the Mineral Leasing Act of 1920 indicates it was regarded as compensation to the States for the losses resulting from the decision to retain large quantities of mineral bearing lands in Federal ownership. However, the thirty-seven and one-half percent formula was admittedly a guess as to the percentage needed to accomplish the objective of compensation as it was not founded on any empirical evidence or studies concerning estimates of local tax losses. In fact, the formula adopted represented a compromise figure. The following are extracts from the floor debates considering the revenue sharing provision:

"I feel that this is one of the most important sections of this whole bill. I think it is one that the House should give very careful and considerate attention....[W]e should recognize the fact that the States have lost the power to tax these lands, and they are entitled to a certain amount of money in lieu of the taxation that would naturally come from these sources. Now, in the forest-reserve States the present law is that the States shall receive 25 percent of the receipts....[3]

"Mr. Chairman, there should be no difference of opinion as to the rights of the States and their communities to be compensated for the great losses in taxing values which they will suffer by reason of holding perpetually in Federal ownership untaxed very great areas of land that will in time support large populations and require great outlay for the support of the institution of government. The only question that ever ought to be raised in this connection is as to what portion of the rents and royalties that will be received by the Government are necessary to compensate the States and their communities for their loss in taxing value. In the case of forest reserves, lands that do not entail great expense for administrative purposes, we give the States directly 25 percent of the receipts to compensate for the losses which the State suffers by reason of its inability to tax these lands. We give 10 percent of those receipts for the building of roads on the reserves. We grant 10 percent of those receipts to the fund to construct roads in cooperation with the communities on and off the reserve, so that 45 percent of the receipts by the Federal Government from these reserved lands are paid directly to or used for purposes and expenditures which would otherwise have to be paid for by the community. The areas we are proposing to withhold from sale and taxation now are very much more valuable than the forest areas. When they are developed they will support a very considerable population of miners and oil developers.

---

[3] 58 Cong. Rec. 7653 (1919) (remarks of Representative Snell).

> "The outlay for school purposes and for roads will necessarily be large, and the only method whereby the State and communities can secure funds from these lands other than those we are now seeking is by means of a tax on the improvements and on the output. Of course, a tax on the output from these lands held in Government ownership can not be greater than a tax on output generally, and a tax on the improvements of an oil or coal field is necessarily comparatively small in amount, because it can not be higher per dollar of property than the tax on personal property generally.
>
> "The question is how much of the rents and the royalties are the States and their communities entitled to in order to reimburse them for their losses in taxing opportunities? No one can say definitely. There is no way of more than approximately arriving at a determination of the matter."[4]

The compromise nature of the final revenue sharing formula was frankly admitted in the conference report on the bill, an extract from which is set forth below:

> "The third point of difference between the Senate and the House was the disposal of the proceeds. The Senate bill put 45 percentum of the proceeds into the Reclamation Fund and paid 45 percentum to the State. The House bill put 70 percentum of the proceeds from past production and 60 percentum of the proceeds from future production into the Reclamation Fund, and paid 20 percentum from past production and 30 percentum from future production to the State. The compromise reached in conference left *intact the provisions of the House bill for past production*.... As to future production, a compromise was reached by splitting the difference between the House bill, 60 percentum to the Reclamation Fund and 30 percentum to the State, and the Senate bill, 45 percentum to the Reclamation Fund and 45 percentum to the State, thus giving the Reclamation Fund 52 1/2 percentum and the State 37 1/2 percentum of the proceeds from future production."[5]

---

[4] 58 Cong. Rec. 7772 (1919) (remarks of Representative Mondell). Appended to Representative Mondell's remarks is a lengthy memorandum describing the change in policy of the Federal Government from one of land disposal to one of retention. The memorandum also discusses the earlier National Forest Revenue Act and the revested Oregon to California Land Grant Legislation as precedents for revenue sharing. See id. at 7772-74.

[5] H. R. Rep. No. 600 66th Cong., 2nd Sess. 21 (1920). The compromise seems to have been based on the following assumptions. The Senate version of the bill provided for a distribution of 45% of the revenues. This figure was based on the 25% formula used with respect to National Forests the additional 10% on National Forest revenues which must be expended locally for forest trails and roads [16 U.S.C. § 501 (1964)] and a final 10% "dedicated to the reimbursement of the fund provided by Section 8 of the good roads bill, which fund is utilized for the building of roads on or in the vicinity of the [forest] reserves in cooperation with the States and their communities." 58 Cong. Rec. 7772-73 (1919) (Memorandum

Concerning the 1950 amendment to the Statute providing for bi-annual payments, the House report on the bill had this to say:

> "The purpose of this bill is to provide that payments shall be made twice a year to the interested States of moneys due them under section 35 of the Mineral Leasing Act of February 25, 1920, instead of annually as at present. No appropriation of Federal funds is required.
>
> "Section 35 of the Mineral Leasing Act provides for the payment of 37 1/2 percent of the amounts derived from bonuses, royalties, and rentals received under its provisions to the State or Territory within whose boundaries the leased lands or the deposits are located. Many States depend to a large extent upon these payments for the operation of universities and public schools.
>
> "The payments under the Mineral Leasing Act now theoretically are payable on July 1 of each year. In practice, the money usually is not received by the schools until the middle of February or the 1st of March of the following year -- some 8 months after the beginning of the fiscal year.
>
> "The schools would benefit materially if the payments were made as soon as practicable after December 31 and June 30 of each year, as proposed in H.R. 6292, for the following reasons:
>
> (1) The funds are not available for expenditure under the present system of payment for approximately the first 9 months of the fiscal year.
>
> (2) In order to expend these funds for the limited purposes for which they may be expended (new buildings, repairs on old buildings and equipment), it is necessary for the schools either to defer payments until the latter part of the budget year or to carry forward considerable balances from the prior year which may be expended during the earlier part of the budget year.
>
> (3) Schools find it difficult to appropriate their Mineral Leasing Act funds to the fiscal-year budgets for the limited uses to which they may be put when funds are not available until such a late date.
>
> "The Secretary of the Interior in his report on this measure asserted that if the States would benefit from bi-annual payments, the Department would not object to its enactment."6/

5/ Continued
of Representative Mondell). The House version proposed a distribution of 30% based on the 25% distribution from National Forests and the 10% distribution from National Forests for forests trails and roads. 58 Cong. Rec. 7653 (1919) (Remarks of Representative Snell). The result was 37 1/2%, the midway point between the Senate and House proposals.

6/ H.R. Rep. No. 1744, 81st Cong., 2d Sess. 1, 2 (1950).

In 1957 the Statute was amended to provide that an additional fifty-two and one-half percent of mineral leasing revenues realized in Alaska were to be distributed to the State without restrictions. As the following extracts from the Congressional reports relating to this amendatory legislation reveal, the purpose of the greater percentage was to equalize the treatment of Alaska with the other Western States receiving benefits from the Reclamation Fund:

"Under the Mineral Leasing Act of 1920, 37 1/2 percent of all moneys received pursuant thereto are to be paid to the State or the Territory of Alaska for the support of roads and educational institutions, and that 52 1/2 percent of those moneys, except in the case of Alaska, are to be paid into the Reclamation Fund. Section 2 of this bill would remove this discrimination against Alaska by amending the Mineral Leasing Act to provide that Alaska, too, would get its 52 1/2 percent share to be used in such manner as the Territorial legislature should determine".[7]

"Section 2 of H.R. 3477 would amend section 35 of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C., sec. 191), which now provides that 37 1/2 percent of all moneys received from sales, royalties, bonuses, and rentals under that act are to be paid to the State or Territory of Alaska, within the boundaries of which the leased lands or deposits are or were situated, for the support of roads and educational institutions, and that 52 1/2 percent of those moneys, except for proceeds derived from Alaska are paid into the Reclamation Fund, section 2 would amend section 35 to provide that an additional 52 1/2 percent of the revenues derived from Alaska would be paid to the Territory for disposition in such manner as the Territorial Legislature should determine. The Territory would continue to receive 37 1/2 percent for the support of roads and educational institutions. Though the Territory already receives as a direct benefit the same percentage of proceeds as do the various States, the States to which the reclamation laws are applicable do receive some additional benefits from the Reclamation Fund. If the reclamation laws should be extended to Alaska, the Department would give consideration to the desirability of having the additional 52 1/2 percent of the proceeds derived from Alaska paid into the Reclamation Fund. Under present circumstances, however, it is our belief that a payment of 52 1/2 percent directly to the Territory to be used as the Territorial legislature with its intimate knowledge of Alaska's needs shall deem advisable, would further our present policy of encouraging the Territory to accept more responsibility in the carrying out of necessary and desirable programs."[8]

7/ H.R. Rep. No. 156, 85th Cong., 1st Sess. 2 (1957).

8/ S. Rep. No. 475, 85th Cong., 1st Sess. 2-3 (1957). (Letter to Representative Engle, Chairman of the House Committee on Interior and Insular Affairs from Hatfield Chilson, Assistant Secretary of the Interior.)

C. Administration

The payments made to the States under the Statute are administered and determined by the Bureau of Land Management (BLM) of the Department of the Interior. Together with the Geological Survey, the BLM has the responsibility of managing the mineral resources situated on the public domain (and acquired lands) belonging to the United States. The Secretary of Interior has broad authority to grant leasing rights to the minerals situated above and beneath the surface on these lands, and to issue regulations governing the terms and conditions of such leases. These regulations do not deal with the distribution of receipts realized from mineral leases. Rather, the distribution of such receipts is contained in Part 1373 of the BLM Manual. Accordingly, the information contained herein has been derived from the appropriate section of this manual as well as from personal or telephone interviews with responsible BLM personnel.

D. Lands for Which Payments are Made

The statute directs that thirty-seven and one-half per cent of the revenues realized from "sales, bonuses, royalties and rentals" obtained from granting leasing rights to certain mineral bearing lands situated on the public domain be shared with the States in which the lands producing the revenues are located. The statute does not apply to National Parks. As of June 30, 1966, some sixty-two million acres of public domain land were subject to mineral leases. 8a/

8a/ Public Land Statistics 1966, p. 86.

E. Recipients of Payments and Restrictions of Their Use

The statute directs that thirty-seven and one-half percent of all moneys received from mineral leases be paid to the States within the boundaries of which the leased lands are situated as soon as practicable after December 31st and June 30th of each year. The statute directs that the moneys received are to be used by the States "or subdivisions thereof for the construction and maintenance of public schools or for the support of public roads or for the support of public schools or other public educational institutions, as the legislature of the state may direct." With respect to Alaska, the statute provides that, in addition to the thirty-seven and one-half percent of receipts from mineral leases earmarked for schools and roads, that State receive an additional fifty-two and one-half percent not subject to restrictions as to use.

The procedure for making payment is that revenues collected by the Bureau of Land Management from mineral leases are deposited in a receipts account in the Treasury. The Bureau of Land Management maintains records by State of the revenues so received. On the basis of these records the Bureau of Land Management calculates the amount due each State and submits a voucher for payment to the Treasury. The Treasury transfers the appropriate amounts collected to a disbursement account and draws checks to the order of the appropriate State Treasurers which the Bureau of Land Management mails to the State Treasurers accompanied by a statement indicating what the payments are for. In some cases, at the request of the States, the Bureau of Land Management breaks down the source of the revenues by county. No attempt is made by the Bureau of Land Management or any other Federal agency to conduct audits to determine whether the payments are being used for the prescribed purposes. However, the Bureau of Land Management does obtain assurances from the states that the provisions of the Civil Rights Act of 1964 relating to federally assisted programs are being complied with.[9]

---

[9] 78 Stat. 252 (1964), 42 U.S.C. § 2000d, d-1 (1964); 43 C.F.R. § 17.4 (1967).

F. Calculation of Payments

Revenues from mineral leases are composed of rents, royalties, and bonuses. Rents apply to lease lands which are not in productive phase and are stated in terms of a flat sum per acre.[10] Royalties are recovered from productive lands and are usually stated in terms of the percent of the value of the produce recovered. In the case of coal, the royalty is stated in terms of cents per ton. Bonuses are the extra amount which a bidder for a mineral lease may have to pay to obtain the lease. It is usually a single flat sum payment per acre of land leased. Mineral leases are either competitive or noncompetitive depending on the nature of the geological formation.

The value of the mineral recovered on which royalties are based is determined from current market conditions with consideration being given to prices being received for light quality minerals in the same area and to the actual price received.[11] In the majority of cases the actual "gross" amount received from rents, royalties and bonuses are the amounts used in calculating the amounts to be shared with the States. While the Bureau of Land Management imposes certain conditions on lessees regarding the use of mineral bearing lands such as mine safety,[12] and requires that the land be left in a safe condition upon abandonment or termination of the lease,[13] the costs incurred by lessees in meeting these conditions are not deducted from the rents, royalties and bonuses payable.

---

[10] 43 C.F.R. § 3125.1 (1967).

[11] 30 C.F.R. § 221.47 (1967).

[12] 30 C.F.R. § 231.9 (1967).

[13] 43 C.F.R. § 3129.1 (1967); see also the form of the Bureau of Land Management's lease contracts, EBSMC PLLRC File No. 210. The information contained above is also based on information obtained from an interview held March 17, 1968 with Mr. J. D. Turner, Chief, Branch of Mine Operations, U.S. Geological Survey, Department of the Interior, and Mr. Walter M. Harris, Chief Accountant, Conservation Division, U.S. Geological Survey.

FEDERAL STATUTE DIGEST NO. LG

Act of June 10, 1920 (Federal Power Act) 41
Stat. 1063, 1072 (1920), 16 U.S.C. § 810
(1964)

I. Background

The Federal Power Act was the result of over a decade of controversy and intensive study[1] concerning the development of the nation's waterways for both navigation and hydroelectric power.

Prior to the enactment of the statute,[2] the development of the nation's hydroelectric potential was undertaken in an uncoordinated and often chaotic manner.[3] All projects for the development of hydroelectric power required that grants of approval be obtained from all federal and State agencies whose lands were to be affected, and the right to construct the dam had to be secured by an act of Congress.[4] While all of the above factors had slowed down the development of this power resource, there was great concern over the possibility of a monopoly by a few large corporations,[5] and, as was pointed out by the National Waterways Commission, this was clearly a subject area in which Congressional guidance was desirable.[6] The Commission proposed in its final recommendations that an executive authority be established:

> "....which shall be authorized, under such conditions as Congress may impose, to grant permits for the construction of dams and appurtenant structures for power and other purposes in navigable streams and upon the public domain....
>
> "Such a board would also most readily coordinate the activities of the departments having to do with the public domain and would facilitate the promulgation of uniform rules for the use of public land."[7]

The Federal Water Power Act was enacted to provide for the orderly development of the nation's waterways for both navigation and hydroelectric power under the Federal Power Commission. The Commission was authorized to issue licenses for the development and improvement of navigation, and development, transmission and utilization of hydroelectric power. The act also provided for the sharing of thirty-seven and one-half per cent of the charges from such licenses with the States from which they came.[8]

---

[1] National Waterways Commission Report, S. Doc. No. 469 62d Cong., 2d Sess. (1912).

[2] 16 U.S.C. §§ 791 et. seq.

[3] National Waterways Commission Report, S. Doc. No. 469 62d Cong., 2d Sess. 38 (1912).

[4] Ibid.

[5] Id. at 42.

[6] Id. at 43.

[7] Id. at 60.

The law was amended in 1935 to provide for the deduction of certain administrative costs before the distribution of revenues.[9]

II. Provision for Payments and its Administration

A. Pertinent text of the statute

16 U.S.C. § 810 (1964) provides as follows:

> "(a) All proceeds from any Indian reservation shall be placed to the credit of the Indians of such reservation. All other charges arising from licenses hereunder, except charges fixed by the Commission for the purpose of reimbursing the United States for the costs of administration of sections 792, 793, 795-818, and 820-823 of the title, shall be paid into the Treasury of the United States, subject to the following distribution: 12½ per centum thereof is hereby appropriated to be paid into the Treasury of the United States and credited to 'Miscellaneous Receipts'; 50 per centum of the charges arising from licenses hereunder for the occupancy and use of public lands and national forests shall be paid into, reserved, and appropriated as a part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902; and 37½ per centum of the charges arising from the licenses hereunder for the occupancy and use of national forests and public lands from development within the boundaries of any State shall be paid by the Secretary of the Treasury to such State; and 50 per centum of the charges arising from all other licenses hereunder is reserved and appropriated as a special fund in the Treasury to be expended under the direction of the Secretary of the Army in the maintenance and operation of dams and other navigation structures owned by the United States, or in the construction, maintenance or operation of headwaters or other improvements of navigable waters of the United States. The proceeds of charges made by the Commission for the purpose of reimbursing the United States for the costs of administration of sections 792, 793, 795-818, and 820-823 of this title shall be paid into the

---

[8] 16 U.S.C. § 810(a) (1964).

[9] *Ibid*.

"Treasury of the United States and credited to 'Miscellaneous Receipts'.

"(b) In case of delinquency on the part of any licensee in the payment of annual charges a penalty of 5 per centum of the total amount so delinquent may be added to the total charges which shall apply for the first month or part of month so delinquent with an additional penalty of 3 per centum for each subsequent month until the total of charges and penalties are paid or until the license is cancelled and the charges and penalties satisfied in accordance with law."

B. Congressional rationale for payments

No specific statement indicating the Congressional rationale for the revenue sharing provision was found in a review of the hearings, reports and debates dealing with the act itself. However, earlier legislative attempts to deal with regulation and development of water power, such as the "Ferris bill",[10/] provided for the deposit of all revenues in the "reclamation fund". It should also be noted that the Mineral Leasing Act, which contains almost the same revenue sharing provision as the Federal Power Act, was enacted in the same year.

C. Administration

The statute is administered by the Federal Power Commission. It has issued no regulations or manuals which govern the revenue sharing provisions of the statute;[11/] however, there are regulations which provide for the determination of the annual charges to be assessed each licensee[12/] and the provisions under which licenses shall be granted.[13/]

D. Lands for which payments are made

The statute provides for sharing of revenues arising from licenses granted by the Federal Power Commission for the occupancy and use of "national forests and public lands". The payments are made to those States from which the proceeds were collected. Approximately seventy thousand acres of land are involved.

E. Recipients of payments and restrictions on their use

The statute authorizes payment to the States and imposes no restrictions on the use of these payments.

[10/] H.R. 16673 63rd Cong., 2d Sess. (1914).

[11/] 16 U.S.C. § 810 (1964).

[12/] 18 C.F.R. §§ 11.20 *et seq*. (1968).

[13/] 18 C.F.R. §§ 4.1-9.10 (1968).

F. Calculation of payments

The statute[14] provides for payment to the States of thirty-seven and one-half per cent of the annual charges arising from licenses issued by the Federal Power Commission for the use and occupancy of "national forests and public lands". The statute also provides for the separate assessment of certain administrative costs which are also charged to the licensee.[15] Accordingly, the annual bill sent to each licensee after the first of February contains two separate charges: (a) for land use; and (b) for administrative costs.

Payments to the states are determined on the basis of the annual charges for land use which are assessed against licensees. According to the Commission there are two basic rates on which land use charges are calculated: (a) $8.00 per 100 foot width mile for land used for transmission lines; (b) 4% of $60.00 X the number of acres under license for all other land uses.[16]

In addition to the above two rates, the Commission may take into consideration such factors as commercial value, the most profitable use for which the lands are suited, the beneficial purpose to which the lands are to be put and such other factors as the Commission considers pertinent. In any case the minimum annual charge for land use is five dollars.[17]

Administrative costs are assessed on two different classes of licensee: (a) State or Municipal licensees of projects of more than one-hundred horsepower of installed capacity; (b) for other licensees of projects of more than two thousand horsepower of installed capacity.[18]

---

[14] 16 U.S.C. § 810(a) (1964).

[15] Ibid.

[16] Interview with Mr. Robert W. Hall, Head - Section of Applications, Licensed Property Division, Federal Power Commission, April 9, 1968.

[17] 18 C.F.R. § 11.21 (1968).

[18] 18 C.F.R. § 11.20 (1968).

Administrative costs for State or Municipal licensees are calculated on the basic actual cost of administering Part I of the Federal Power Act, and are assessed against each licensee in the proportion that the authorized horsepower installed capacity of each project bears to the total of such capacity under all such outstanding licenses [19]

Administrative costs for other licensees of projects of more than two-thousand horsepower installed capacity are also based on actual administrative costs and are assessed against each licensee in the proportion that the annual charge factor for each project bears to the total annual charge factor for all such projects.[20] These annual charge factors are computed as follows:

(A) For a conventional project the factor is its authorized installed capacity (horsepower) plus 150 times its annual energy output in millions of kilowatt-hours.

(B) For a pure pumped storage project the factor is the authorized horsepower.

(C) For a mixed conventional-pumped storage project the factor is its authorized installed capacity (horsepower) plus 150 times its gross annual energy output in millions of killowatt-hours less 100 times the annual energy used for pumped storage pumping in millions of kilowatt-hours.[21]

State or Municipal licensees may claim a total or partial exemption from the annual charge upon one or more of the following grounds:

(1) The project was primarily designed to provide or improve navigation;

(2) To the extent that power generated, transmitted, or distributed by the project was sold directly or indirectly to the public (ultimate consumer) without profit;

(3) To the extent that power generated, transmitted, or distributed by the project was used by the licensee for State or municipal purposes.[22]

---

[19] Ibid.
[20] Ibid.
[21] Ibid.
[22] 18 C.F.R. § 11.24 (1968).

In addition to the above, licensees may also be charged a penalty for late payment of these assessments as provided in the statute.[23]

Annual charges assessed against the owners of non-federal power projects directly benefited by a storage resevoir or other headwater improvement of the United States or its permittee or licensee, are not paid into the revenue sharing fund.[24]

Proceeds from each annual year are collected by the Commission and deposited in a special account with the Treasury. Payments to the States are made after the close of the fiscal year by the Treasury, and are based on the amount of revenue collected from each State, as provided for in the statute.

In actual practice, these payments do not constitute a very large total amount of money.[25]

---

[23] 16 U.S.C. § 810(b) (1964).

[24] Telephone interview with Don L. Pearson, Fiscal Accountant, Federal Power Commission, April 30, 1968.

[25] For example, the total receipts distributed to all the States in fiscal year 1966 amounted to $70,624.46; in fiscal 1965 the amount was $124,067.84.

FEDERAL STATUTE DIGEST NO. LH

Act of December 21, 1928 (Boulder Canyon Project)
45 Stat. 1057, 1058 (1928), as amended,
43 U.S.C. §§ 617c(b), 618a(c) (1964)

I. Background

The Boulder Canyon Project Act of 1928 authorized the construction of the Hoover Dam and other works on the main stream of the lower Colorado River for the purposes of (1) flood control, (2) improved navigation, (3) power generation, and (4) irrigation. [1] This legislation also provided that thirty-seven and one-half per cent of all excess revenues from the project were to be divided equally between Arizona and Nevada. In 1940 the statute was amended by providing that the payments received under the revenue sharing provision were to be commuted to a flat sum payment of $300,000 annually to each state. [2]

II. Provision for Payments and its Administration

A. Pertinent text of the statute

43 U.S.C. §§ 617c(b), 618a(c) (1964) provide in part as follows:

> "[617c(b)] If during the period of amortization the Secretary of the Interior shall receive revenues in excess of the amount necessary to meet the periodical payments to the United States as provided in the contract, or contracts, executed under this subchapter, then immediately after the settlement of such periodical payments, he shall pay to the State of Arizona 18-3/4 per centum of such excess revenues.
>
> "[618a(c)] Commutation payments to Arizona and Nevada. Payment subject to the provisions of section 618b of this title, in commutation of the payments now provided for the States of Arizona and Nevada in section 617c (b) of this

---

[1] 43 U.S.C. § 617 (1964).
[2] 54 Stat. 774 (1940).

"title to each of said States of the sum of $300,000 for each year of operation, beginning with the year of operation ending May 31, 1938 and continuing annually thereafter until and including the year of operation ending May 31, 1987, and such payments for any year of operation which shall have expired at the time when this subsection shall become effective shall be due immediately, and be paid, without interest, as expeditiously as administration of this subchapter will permit, and each such payment for subsequent years of operation shall be made on or before July 31, following the close of the year of operation for which it is made. All such payments shall be made from revenues hereafter received in the Colorado River Dam Fund.

"Notwithstanding the foregoing provisions of this subsection, in the event that there are levied and collected by or under authority of Arizona or Nevada or by any lawful taxing political subdivision thereof, taxes upon --

"(1) the project as herein defined;

"(ii) the electrical energy generated at Hoover Dam by means of facilities, machinery, or equipment both owned and operated by the United States and operated under contract with the United States;

"(iii) the privilege of generating or transforming such electrical energy or of use of such facilities, machinery, or equipment or of falling water for such generation or transforming; or

"(iv) the transmission or control of such electrical energy so generated or transformed (as distinguished from the transmission lines and other physical properties used for such transmission or control) or the use of such transmission lines or other physical properties for such transmission or control,

"payments made hereunder to the State by or under the authority of which such taxes are collected shall be reduced by an amount equivalent to such taxes. Nothing herein shall in anywise impair the right of either the State of Arizona or the State of Nevada, or any lawful taxing political subdivision of either of them, to collect non-discriminatory taxes upon that portion of the transmission lines and all other physical properties, situated within such State and such political subdivision, respectively, and belonging to any of the lessees and/or allottees under this subchapter, and nothing herein shall exempt or be construed so as to exempt any such property from non-discriminatory taxation, all in the manner provided by the constitution and laws of such State. Sums, if any, received by "each State under the provisions of the Project Act shall be deducted from the first payment or payments to said State authorized by this subchapter. Payments under this subsection shall be deemed contractual obligations of the United States, subject to the provisions of section 618b of this title."

B. Congressional rationale for payments

The legislative history relating to these payment provisions is voluminous and as such only a few extracts from the various Congressional materials dealing with these provisions will be quoted. With respect to the 1928 legislation, the legislative history indicates that the original revenue sharing provision was enacted to compensate the States of Arizona and Nevada for the loss of revenues which would have accrued to them if the project had been built and operated by private enterprise, and as such subject to State and local taxation. This point is made quite clear in the hearings dealing with the provisions.

> "It follows from this statement of principles - from this enunciation of policy - that Arizona earnestly protests the passage of S. 728, the so-called Swing-Johnson bill. That measure, according to the Arizona view, is in direct contravention of the Constitution of the United States and the established law of the land, and violates every principle of equality of the States and of fair dealing and justice between them. It would gravely menace Arizona's future, if not virtually destroy her opportunities for growth, and favors the State of California at the expense of Nevada and Arizona in a manner wholly unnecessary and uncalled for....
>
> "... 6. Because, while precluding the States of Nevada and Arizona from securing a revenue from a national resource belonging to them, it would burden the power developed through the use of that resource to subsidize a California reclamation project....[3]

---

[3] Hearings before Senate Committee on Irrigation and Reclamation on S. 728. 70th Cong., 1st Sess. 38-39 (1928) (remarks of Mulford Winsor, Secretary of the Colorado River Commission of Arizona).

> "Under such circumstances, subject to the clear right of the Government and subject to operating the project on a sound financial basis, these States should be accorded a chance for revenue in respect to these power resources situated within their borders - the guiding principle being that of substitution for what justly could be collected by way of taxes if the plant were owned and operated by private enterprise...."[4]
>
> "1. That the States of Arizona and Nevada should receive an amount from the proposed development at least equal to the benefits that they would receive if this natural resource were developed by private capital, and upon reasonable notice be allowed to withdraw certain amounts of power for use in their own State...."[5]

So far as the thirty-seven and one-half per cent figure is concerned, the floor debates indicate that it was patterned after the Mineral Leasing Act of 1920.

> "Some who are unfamiliar with the facts surrounding the initiation of this legislation and the conditions of the Colorado River have naturally inquired why should the States of Arizona and Nevada be granted any revenues? At the time that Congress had under consideration the oil leasing bill and it was proposed to pay to the State where the oil lands were leased by the Government 37-1/2 per cent of the royalties received by the Government the question was asked, Why should the States receive any royalty paid to the Government? Congress in such act did pass such provision and did allow the State 37-1/2 per cent of the royalties received, and answered such questions as follows:
>
> "Congress had the legal right to adopt a conservation policy. The Government owned the public lands in which the oil was located.

---

[4] Id. at 218 (statement of L. Ward Bannister for Denver, Colorado).

[5] Id. at 503 (committee recommendations).

> "Congress had authority to withdraw such lands from entry and acquisition by private owners. Congress did this. While it was a good policy, it injured the State in which the policy was put in force and effect because it withdrew forever from the possibility of taxation such lands and mineral resources. The State's ability to maintain through taxation the State Government was thereby depreciated. States cannot exist unless there is property to tax. Whilst there was no legal obligation on the part of Congress to grant any royalties to the States, they considered it just and right that it should be done to compensate to some extent the State for the loss of potential taxable property.
>
> "This amendment is based upon the same theory, and Congress is asked to extend to the States the same policy under this act...."[6]

In 1929 United States Attorney General ruled that the project was not required to generate excess revenue for payment to the two States.[7] The result of this ruling combined with the possibility of a downward adjustment of rate charged to power purchasers led to a compromise whereby the two States agreed to accept a payment of $300,000 annually in commutation of the amount which would be paid under the revenue sharing formula. In short, stability of certain revenues was traded for the uncertainties of fluctuating revenues. The Senate report on the 1940 amendment making this change makes this clear:

> "The Attorney General held that the project act's requirements did not include realization of excess revenues for payment to the States of Arizona and Nevada. The States of Nevada and Arizona, however, believed that they were going to receive from their share of 18-3/4 per cent of excess revenues, a sum in lieu of the loss of taxation, substantially over $300,000 annually. It was undoubtedly the intent of Congress that the States of Arizona and Nevada should receive something in lieu of the loss of taxation by virtue of the fact that the project was constructed by the United States Government. The original contracts for the sale of power or falling water were based, under the act,

---

[6] 69 Cong. Rec. 5276 (1928) (remarks of Senator Pittman).
[7] 36 Op. Att'y Gen., 121, 142-43 (1929).

> "on a competitive price. The competitive price fixed in these contracts assured to the States of Arizona and Nevada well over $300,000 annually. However, the act provided that the rates may be readjusted in 1945 and every 10 years thereafter. The readjustment of the rates by virtue of competitive conditions might have reduced the rate and, therefore, the excess earnings. These contracts were reviewed by the appropriation committees of the two Houses, by the Attorney General and the Comptroller General, and the first appropriation was made in the act of July 3, 1930 (46 Stat. 877, 1146)...."[8]

The 1940 adjustment legislation also contained specific language which required that the rates set for power sales be such that they produce, sufficient revenues to ensure, among other things, the $300,000 annual payments to the two States.[9] An excellent explanation of the reason for this feature of the legislation is found in the hearings relating to the provision. The hearings also indicate the negotiated nature of the $300,000 figure.

---

[8] S. Rep. No. 1784, 76th Cong., 3rd Sess. 3 (1940).

[9] 43 U.S.C. § 618 (1964) provides in part as follows:

> "The Secretary of the Interior is authorized and directed to, and he shall, promulgate charges, or the basis of computation thereof, for electrical energy generated at Hoover Dam during the period beginning June 1, 1937, and ending May 31, 1987, computed to be sufficient, together with other net revenues from the project, to accomplish the following purposes:
>
> "(a) To meet the cost of operation and maintenance and to provide replacements, of the project during the period beginning June 1, 1937 and ending May 31, 1987;
>
> "(b) To repay to the Treasury, with interest, the advances to the Colorado River Dam Fund for the project prior to June 1, 1937, within fifty years from that date...
>
> "(c) To provide $600,000 for each of the years and for the purposes specified in section 618a(c) of this title;...."

> "The adjustment act proposes to fix the rates on an amortization basis instead of on the fluctuating basis of competitive conditions. This would automatically eliminate all 'excess revenues,' unless coupled with a provision for the creation of an excess, and in order to carry out the intent of the original act it becomes essential that such a provision be included. The proposed adjustment act provides for the payment of a fixed sum of $300,000 per annum to each of the States of Arizona and Nevada in commutation of their percentage participation under the existing act. This figure was arrived at by negotiations between representatives of the power contractors and of the States of Arizona and Nevada. The official delegates of the States, in consenting to this commutation, have done so in the spirit of cooperation with the upper basin States and the power contractors in order to effect lower rates to ultimate consumers and agree upon a program fair and acceptable to all interests...."10/

The floor debates on the 1940 amendment also indicate the compromise nature of the $300,000 payments as well as the desire to exchange fluctuating payments for a stablized certain payment.

> "The fact of the matter is that the whole Boulder Dam project was worked out by the State of Nevada. It was worked out in contemplation of a great future. It was worked out along scientific lines. It was worked out so that all the lower basin and upper basin States might profit thereby. Not a single selfish move was put forward by Nevada.
>
> "During the existence of the present law the State of Nevada may enjoy something over $1,000,000 per year, according to the Mead tables, set down and published; but we have relinquished that for a stabilized situation. In other words, instead of a million dollars a year this year and perhaps $200,000 some years hence, we have struck a mean amounting to $300,000 a year...."

C. Administration

The Boulder Canyon Project is administered by the Bureau of Reclamation, Department of Interior. The Bureau has extensive procedures for power rate determination and for management of the project. The provision for the annual $300,000 payments is, according

---

10/ *Hearings before the House Committee on Irrigation and Reclamation on H.R. 6629*, 76th Cong., 1st Sess. 75 (1939) (statement submitted by the seven States in the Colorado River Basin).

11/ 86 Cong. Rec. 9007 (1940) (remarks of Senator McCarran).

to Bureau personnel, self executing, and there is little if anything administratively dealing with such payments.[12]

D. Lands for which payments are made

The statute directs that annual flat sum payments of $300,000 each be made to Arizona and Nevada until 1987 from the power revenues generated by the project.

E. Recipients of payments and restrictions on their use

The statute provides for annual payments of $300,000 to be made on or before July 31st of each year to Arizona and Nevada. The statute imposes no restrictions on the uses to which the payments may be put. The Bureau makes the payments promptly each year as required by the statute.[13]

F. Calculation of payments

The statute provides that the rates charged to purchasers of electric power must be sufficient, among other things, to ensure the $300,000 annual payment fixed by the statute. It also provides that the $300,000 payment be reduced by any State and local taxes levied on the project or its activities. According to representatives of the Bureau no such taxes have ever been levied.[14]

12/ Telephone interview on August 9, 1967 with Mr. James S. Reece, Chief Division of Audit and Financial Review, Bureau of Reclamation.

13/ Ibid.

14/ Ibid.

FEDERAL STATUTE DIGEST NO. LI

Act of May 18, 1933
(Tennessee Valley Authority Act)
48 Stat. 58, 66, as amended, (1933), 16 U.S.C. § 831l (1964)

I. Background

In 1933, Congress created the Tennessee Valley Authority (TVA), to develop the watershed of the Tennessee River.[1] Among the objectives of the Act were the improvement of navigation on the Tennessee River, flood control, and the industrial development of the valley. To accomplish these objectives the TVA was authorized to build dams on the Tennessee River and its tributaries and to acquire lands for the purposes of construction of reservoir sites and hydroelectric dams.

In order to render financial assistance to the States in which TVA acquired properties previously subject to State and local taxation, it was provided that Alabama and Tennessee receive a share of the revenues realized from the sale of power from the dams.

II. Provision for Payments and its Administration

A. Pertinent text ofthe statute

16 U.S.C. § 831l (1964) provides in part as follows:

> "In order to render financial assistance to those States and local governments in which the power operations of the Corporation are carried on and in which the Corporation has acquired properties previously subject to State and local taxation, the board is authorized and directed to pay to said States and the counties therein, for each fiscal year, beginning July 1, 1940, the following percentages of the gross proceeds derived from the sale of power by the Corporation for the preceding fiscal year as hereinafter provided together with such additional amounts as may be payable pursuant to the provisions hereinafter set forth, said payments to constitute a charge against the power operations of the Corporation: For the fiscal year (beginning July 1) 1940, 10 per centum; 1941, 9 per centum; 1942, 8 per centum; 1943, 7½ per centum; 1944, 7 per centum; 1945 6½ per centum; 1946, 6 per centum; 1947, 5½ per centum; 1948 and each fiscal year thereafter, 5 per centum. "Gross proceeds", as used in this section, is defined as the total gross proceeds

---

[1] 48 Stat. 58 (1933).

"derived by the Corporation from the sale of power for the preceding fiscal year, excluding power used by the Corporation or sold or delivered to any other department or agency of the Government of the United States for any purpose other than the resale thereof. The payments herein authorized are in lieu of taxation, and the Corporation, its property, franchises and income, are expressly exempted from taxation in any manner or form by any subdivision or district thereof.

"The payment for each fiscal year shall be apportioned among said States in the following manner: One-half of said payment shall be apportioned by paying to each State the percentage thereof which the gross proceeds of the power sales by the Corporation within said State during the preceding fiscal year bears to the total gross proceeds from all power sales by the Corporation during the preceding fiscal year; the remaining one-half of said payment shall be apportioned by paying to each State the percentage thereof which the book value of the power property held by the Corporation within said State at the end of the preceding fiscal year bears to the total book value of all such property held by the Corporation on the same date. The book value of power property shall include that portion of the investment allocated or estimated to be allocable to power: Provided, That the minimum annual payment to each State (including payments to counties therein) shall not be less than an amount equal to the two-year average of the State and local ad valorem property taxes levied against power property purchased and operated by the Corporation in said State and against that portion of reservoir lands related to dams constructed by or on behalf of the United States Government and held or operated by the Corporation and allocated or estimated to be allocable to power. The said two-year average shall be calculated for the last two tax years during which said property was privately owned and operated or said land was privately owned: Provided further, That the minimum annual payment to each State in which the Corporation owns and operates power property (including payments to counties therein) shall not be less than $10,000 in any case: Provided further, That the Corporation shall pay directly to the respective counties the two-year average of county ad valorem property taxes (including taxes levied by taxing districts within the respective counties) upon power property and reservoir lands allocable to power, determined as above provided, and all payments to any such county within a State shall be deducted from the payment otherwise due to such State under the provisions of this section. The determination of the board of the amounts due hereunder to the respective States and counties shall be final.

"The payment above provided shall in each case be made to the State or county in equal monthly installments beginning not later than July 31, 1940."

B. Congressional rationale for payments

The legislative history of the statute is voluminous both with respect to the original 1933 legislation and the 1940 amendments made thereto. Of interest is the fact that the purpose of the legislation is contained in the present statutory language itself. The original legislation provided that five percent of the gross proceeds from the sale of hydroelectric power generated from certain plants situated in Alabama and Tennessee should be shared with the States in which the power sites and dams were located.[1a] As additional power generating facilities were built, provision was made for sharing equally between the two States' five percent of the proceeds from the additional power sales attributable to the new facilities. Sales to other Federal agencies were not to be included in the compilation of gross proceeds.

There were conflicting views as to whether the States should receive anything at all, as illustrated in the following portions of the Congressional debates:

> "The conferees on the part of the House were able to persuade the conferees on the part of the Senate to agree to eliminate the 5 percent on the gross proceeds from the sales of steam power. Let me say that the foundation upon which this 5 percent is predicated is not alone the mere substitute for taxes which the State may levy; but here is the philosophy upon which it is grounded: The Supreme Court of the United States has held that the title to the bed of every navigable stream in this Nation rests in the State, not in the Federal Government. All the Federal Government has is the right to use for purposes of interstate commerce, the water that rests upon the stream bed that belongs to this state. Presumably, therefore the water itself belongs to the state, and undoubtedly either one of these States could if it had wished to do so, while preserving the right of interstate commerce to the several States under the Federal Constitution, have gone in there and appropriated to itself every unit of horsepower that lay in the waters of this great stream for a distance, including navigable tributaries, of nearly 1,000 miles. All it would have to do would be to provide locks around power dams, or the State might authorize any of its private corporations to do the same thing, subject to the provisions of the Federal Water Power Act."[2]

> "I do not want to enter into any extended discussion of the matter but so far as I am personally concerned, and I am absolutely honest about it, I cannot see any reason in God's world why we should pay these two States 5 percent of the gross proceeds, and I doubt if anybody can present a logical reason for doing this. We are going in there and spending our money at the request of the States. These people want us to come there and make this development; is not that correct?"[3]

[1a] 48 Stat. 58, 66 (1933).

[2] 77 Cong. Rec. 3595 (1933) (remarks of Representative McSwam).

[3] Ibid. (remarks of Representative Snell)

> "The proposal that the Government should make continued contributions to the States of Alabama and Tennessee under section 13 of the act is abhorrent to every fair-minded taxpayer, because it means that, in addition to the expenditure of hundreds of millions of dollars for dams, power houses, machinery, and so forth, the Government is to pay for the privilege of developing power for use of residents of Tennessee and Alabama."[4]

The floor debate also indicated that the five percent figure was at best a "guesstimate."

> "It seems to me that is fair. I can see how, in the years to come, conditions may change very greatly, may change so that the present rates would not be enough, or changed so that the rates would be too high. The matter will be in the hands of the board to be set up. Every 5 years, if it wants to, the board can change the rate, and I take it, it will be fair about it, if it is not right. I am sure I could not say accurately, if I were asked, whether the rate is right or no. I fixed the percentages myself. I did the best I could, and I want to tell the Senate what I did. Long before it was necessary to prepare the first bill in which this provision occurred, I started an investigation in order to find what percentage of the gross revenue of the power companies was paid in the way of taxes. That was an exceedingly interesting study. Some of the companies paid, as I remember it - and I am speaking only from memory - less than 1 percent of their gross revenue. Some paid as high as 10, 11, and 12 percent of their gross revenue. I struck what I thought was a sort of mean. There was no definite, well-established rule about it. They paid just as little in the way of taxes always as they could, and it depended upon the kind of board they had to deal with and how much the tax would be."[5]

The original 1933 legislation made no provision for payments to local units of governments. The floor debates also mention the reasons for this.

> "I confess I would feel it a very difficult task if I were called upon to draw a statute like this, and divide up the percentages as to the different particular parts of the State which should receive the tax, like the State, and the county, and the municipality, and the school district, and so forth. I did not try to do that. I think there is no doubt that it is perfectly legal, that the State of Tennessee can do what they please with the tax which is paid to the State of Tennessee, if one is paid. They can carry it on down, as they do other taxes, and let it all go to the municipality, if they desire, or to the school district, the road district, or to the county. In other words, we are not undertaking to say to the State how they shall divide it up. I think that is up to the State."[6]

4/ Id. at 3601 (remarks of Representative Frear).
5/ Id. at 2683 (remarks of Senator Norris).
6/ Ibid. (remarks of Senator Norris).

The provision that "gross proceeds" rather than net profits be used, also provoked some comments in the congressional debates. Despite objections, however, gross proceeds were used as the basis for making payments to the States.

> "It proposes to pay the State of Alabama a 5 percent gross dividend - and I emphasize the word "gross" - each year from the power developed from Dam No. 2, or any present or future steam plant. It does not make any difference whether the operation shows a profit or not. It does not make any difference whether the Government breaks even on the operation. Always the first 5 percent goes to the State of Alabama; and since the Government must meet the deficit if the operation is not a fiscal success, inevitably that means that the 5 percent comes out of the Treasury of the United States under those circumstances and is a charge squarely to the taxpayers of the United States."6/
>
> "But there is one very objectionable feature of this bill which ought to be corrected before we pass it into law. And it can be easily corrected, and yet not delay the measure beyond a few hours. I refer to the provision which obligates the payment of 5 percent of the gross proceeds to each of the States of Alabama and Tennessee. It should read 5 percent of the net profits, and not 5 percent of the gross proceeds. What we ought to do is to vote down the conference report and then move immediately to concur in the agreed amendments with the amendment that 'gross proceeds' shall be changed to 'net profits'.
>
> "I feel sure that neither Senator Norris nor any other Senator outside of Alabama and Tennessee would raise any objection whatever to such change. Naturally, the 2 Senators from Alabama and the 2 Senators from Tennessee would object to such action, as they want their respective States to receive this 5 percent of the gross proceeds. But other Senators would not object to changing it to '5 percent of the net profits', because that percentage is all that would be equitable and just."7/

In the late 1930's the TVA purchased the private utility companies with which it was in competition. The rural counties of Tennessee depended upon the taxes paid by the utility companies to supply most (up to seventy per cent) of their revenue. This source of revenue was now eliminated, with the result that many of the counties no longer had sufficient revenues to support their schools and were in danger of defaulting their bonds. Furthermore, the Tennessee Constitution did not permit the State to distribute to the counties the revenue obtained from TVA.

In response to this situation, TVA, the counties, and the States submitted an alternate revenue sharing provision to Congress in 1940. The revised provision called for TVA to pay ten per cent of the gross

---

6/ 77 Cong. Rec. 2663 (1933) (remarks of Senator Vanderberg).
7/ Id. at 3597 (remarks of Representative Blanton).

receipts from all power sales (except those made to the Federal Government) to the States in 1940. The percentage would decrease each year until 1948 when it would again become five per cent. It was anticipated that steadily increasing receipts from power sales would offset the decreasing yearly percentage with the result that the revenues flowing to the States and counties would remain relatively constant. The payments were to be apportioned half on the basis of the value of power property owned by the TVA in each State and half on the basis of power sales within each State. The proposed formula also permitted TVA to make payments to additional States, e.g., North Carolina, Mississippi, Kentucky, Georgia, and any other States in which the TVA had acquired power property.

Finally, the proposed formula allowed TVA to make direct payments to the counties of a sum equal to the ad valorem property taxes last levied on power property acquired by the TVA. These payments to the counties were to be deducted from payments to the States. The resulting formula was a combination of payments in lieu of taxes and revenue sharing designed to replace the property and income taxes to which TVA would have been subject were it privately owned.

The Senate report dealing with this legislation gives an excellent summary of the amendments and the reasons therefore.

> "There were some counties in Tennessee and Georgia where property was located that was purchased from the Tennessee Electric Power Company where some adjustment was absolutely necessary to prevent serious hardship and loss. The experts representing the various localities and States and the experts of the Tennessee Valley Authority have worked out a solution, however, which is satisfactory to all parties concerned, and this bill is intended to carry out and give effect to the agreement so reached, and also to remedy the unjust situation under existing law by which there was no provision made for the payment of any money in lieu of taxes outside of the States of Alabama and Tennessee.
>
> "It also remedies a situation which has become important since the purchase of the properties of the Tennessee Electric Power Company by the Authority, by providing that money in lieu of taxes shall be paid from money received from steam generating plants as well as hydroelectric generating plants. There was considerable disagreement and discussion as to how the money in lieu of taxation derived from generating plants should be divided among the States. On the one hand, it was claimed that this money should be apportioned by paying to each State the percentage thereof which the gross proceeds of the power sales by the corporation within the said State bears to the total gross proceeds from all power sales by the Authority. On the other hand, it was claimed that such moneys should be apportioned by paying to each State the percentage thereof

"which the value of the power property held by the corporation bears to the total value of all such property held by the corporation. As a compromise, it was agreed by all the parties interested that one-half of the money going to the States and counties in lieu of taxes should be divided up among the States and counties according to one of the above formulas, and the other one-half should be divided according to the other formula.

"It is believed and intended that this bill provides for the complete payment of money in lieu of taxes that would be equal to the ad valorem taxes on the property involved. In order that there may be no doubt on the question, and that full return may be made for the payment of an amount equal to the ad valorem taxes, it is provided that the -

> payment to each State, including payments to counties therein, shall not be less than an amount equal to the two-year average of the State and local ad valorem property taxes levied against power property.

"Another change made in existing law is that payments in lieu of taxes shall be paid monthly, instead of annually. In the original bill, as introduced, annual payments were provided for, but the various local authorities were anxious to have this change made, and while it would increase the work of the Authority, no objection has been made on the part of the Authority to such change.

"Another material change made between the bill as introduced and the amended bill as reported is that the payment of money in lieu of taxes shall not be entirely paid to the various States, but shall be paid by the Tennessee Valley Authority direct to the various taxing units. This change was made at the earnest solicitation and recommendation of the local authorities who did not desire that this money paid in lieu of taxes by the Authority should be paid direct to the States, because they feared various difficulties might arise in the State legislatures as to the method of distribution of such moneys, and it was in response to these requests and earnest suggestions made by the local authorities that the committee made the change asked for."[8]

The hearings on the amendatory legislation also provide insights as to the reasons for certain provisions.

Thus the decreasing percentage of payments from 1940 to 1948 were explained as follows:

---

[8] S. Rep. No. 1310, 76th Cong., 3rd Sess. 3-4 (1940).

> "Mr. Fitts: That is correct, Senator. Our best estimates show that this sliding scale will provide a practically constant sum of money. In other words, the five percent in 1948 will be equivalent to the ten percent now, because the revenues will have increased to that extent. So that we are here providing that the sum of money shall remain constant, at least until 1948, and our best figure on that is that after that it will gradually increase and get to be a little bit more than the amount that would be paid the first year under this bill."[9]

The Director of TVA explained that the legislation was a cooperative effort between TVA and local authorities.

> "As I think you know, Senator, something over a year ago the Tennessee Valley Authority, in cooperation with the governors and fiscal officers of the several Tennessee Valley States undertook a study of the legal and financial and factual problems involved in the revision of Section 13. That discussion with the various States, State and local taxing bodies and other interested citizens, resulted in certain recommendations, most of which has been incorporated by you in the bill which you have introduced."[10]

Finally, an explanation as to why the counties wanted to receive payments directly is provided in the following extract:

> "What we want primarily is a replacement of taxes lost by these counties...Take Polk County...That county will lose, as a result of the purchase of the two dams on the Tacoa River... $106,137.68. If they do not get a replacement they will have to quit.
>
> "They cannot pay off. They have built their budget around this assessment."[11]

The net result is a combination of straight payments in lieu of taxes and revenue sharing. Certain minimum payments in lieu of taxes are provided to the counties and to the States. Additional payments are provided to the States depending on the revenues produced by TVA power sales. If TVA was subject to state taxation, such taxation would normally be based on power sales and the statute in effect provides for revenue sharing payments based on this principle. The minimum payments represent the local property taxes to which TVA would be subject if privately owned.

---

[9] Hearing before a Subcommittee of the (Senate) Committee on Agriculture and Forestry on S. 2925 - A Bill to amend the Tennessee Valley Authority Act of 1933, 76th Cong., 3rd Sess. 6 (1940) (remarks of Wm. C. Fitts, General Counsel, Tennessee Valley Authority).

[10] Id. at 2 (remarks of David Lilienthal, Director, TVA).

[11] Id. at 24 (remarks of W. D. Hudson - Railroad and Public Utilities Commission of Tennessee).

C. Administration

The statute is administered by TVA. There are no rules and regulations concerning the payments made to the States and counties. The procedure for making payment is set forth in TVA Accounting Procedure 26, an internal guideline document which is discussed in "F" below.

D. Lands for which payments are made

The statute provides that TVA shall make payments to States and counties with respect to properties which the TVA has acquired "previously subject to State and local taxation." Property includes reservoir land related to dams constructed by TVA and purchased power properties. Power property constructed by TVA is not included in property with respect to which payments are made.

E. Recipients of payments and restrictions on their use

The statute authorizes and directs that monthly payments be made to States and counties out of the gross proceeds realized from power sales. No restrictions are imposed by the statute on the uses of the payments received.

F. Calculation of payments

The statute authorizes and directs that monthly payments be made to States and counties out of the gross proceeds realized from power sales. Gross proceeds excludes power sold by TVA itself or "sold or delivered to any other department or agency of the Government of the United States for any purpose other than the resale thereof." The statute imposes no restrictions on the uses to which the recipient States and counties may put the payments received. Payments to the States and counties are made by check which is mailed by the last day of each month. The statute provides a detailed and complicated formula for making payments to the States and counties. The payments are characterized by the statute as in lieu of tax payments but are in fact payable only out of gross revenues from power sales by TVA. The statute also provides for minimum payments insofar as States are concerned but for straight in lieu of tax payments insofar as counties are concerned.

1. Counties. The total amount paid to each county is equal to the two year average of county ad valorem taxes, including taxes levied by taxing districts, other than municipalities, within the respective counties, on property acquired by TVA which was previously subject to State and local taxation. The two year average is calculated for the last two tax years during which the property was privately owned and/or operated.

2. States. The total amount paid to each State is the highest of the three computations shown below less the total amount paid direct to counties within the State:

(a) The two year average of State and local property taxes on property acquired by TVA which was previously subject to state and local taxation. The two year average is calculated for the last two tax years during which the property was privately owned or operated;

(b) $10,000; or

(c) A share of the percent of the gross revenues from TVA power sales for the preceding fiscal year (excluding sales to other Government agencies). The share for each State is based on a two part formula:

(i) One half is based on the ratio of gross proceeds from sale of power within the State to the total power sales in all States;

(ii) One half is based on the ratio of book value of TVA's power property held within each State on June 30 of the preceding fiscal year to the total book value of power property held by TVA in all states on the same date.

In calculating the minimum payment TVA Accounting Procedure 26 provides in part as follows:

> "The annual minimum amount to be paid in lieu of taxes to each state and county on power property purchased and operated by TVA and on that portion of reservoir land related to dams constructed by or on behalf of the United States, held or operated by TVA, and allocated or estimated to be allocable to power purposes is the amount equal to the average ad valorem tax levied on such property for the tax year of purchase and the tax year prior to purchase during which the property was privately owned. The taxes used as the basis for computation of the minimum payment include those levied by taxing districts within the respective counties, by municipalities, and by states....
>
> "Two general classes of property are included in the minimum tax replacement base---reservoir land and purchased power property.
>
> "[(1) Reservoir land] means land related to dams constructed by or on behalf of the United States and held or operated by TVA and consists of tracts acquired in fee simple and tracts over which flowage easements are acquired. Land is deemed to be held by TVA as of the date the deed of conveyance or the declaration of taking, for land acquired by condemnation, is filed for record....
>
> "Reservoir lands transferred to the U.S. Forest Service or to other Federal agencies or departments but still carried in the plant accounts of TVA are retained in the tax base used in computing minimum payments and in the book value of power property

> "used for calculating the distribution among the states of one half of the total percentage payment. However, credit is taken...for payments made by the U.S. Forest Service or other Federal agencies allocable the land transferred....
>
> "[(2) Power property] purchased as an operating unit or system by TVA from a utility company is included in the tax replacement base; power property constructed by TVA is not included. Land, other than reservoir land, purchased for purposes of power development is not included in the tax replacement base unless it is acquired in the purchase of operating properties from a utility company. Adjustments of the tax replacement base when purchased power property is sold, abandoned, scrapped, retired, or replaced by new facilities depend on whether the property is "operated" by TVA as of the end of the fiscal year and on other facts of each individual case. When such property is sold by TVA, it is removed from the tax replacement base if the former tax assessment can be determined. In some circumstances, estimate of the former valuation may be made for this purpose by proration. As a general rule, purchased power property abandoned or scrapped remains in the tax replacement base. Power property sold to a private owner and converted to nonpower use remains in the replacement base to the extent that the assessed valuation to the new owner is less than the former assessed valuation to the power company."[12]

In computing gross revenues out of which payment to the States in excess of the minimum payments are made TVA Accounting Procedure 26 provides for the following breakdown by State:

> "Gross revenues received from
> Municipalities
> Cooperatives
> Electric Utilities
> Industrial sales
> Federal agencies (wholesale)
> Rural service (direct)
> Interdivisional sales (wholesale)
> Retail sales in villages (including Oak Ridge)
> Customers' forfeited discounts and penalties
> Gross Power sales
>
> "Deduct - revenues to be excluded
> Sales to Federal agencies
> Interdivisional sales
> Customers' forfeited discounts and penalties (Federal agencies)
> Total deductions
> Net revenue from sale of power as defined in the statute."[13]

---

[12] TVA Accounting Procedure 26, EBSMC PLLRC File No. 208.
[13] *Ibid*.

Finally, in computing the book value of power property in the States, such factors as original cost and depreciation reserves are calculated for each plant property from plant accounts maintained by TVA.

G. Problem areas or matters suggested for consideration by the Commission

The TVA statute is not only complex but unique in that it provides, in effect, compensatory payments for local property taxes and State income taxes which could be levied if TVA were a private utility. This sophisticated approach to the problem of in lieu tax payments could serve as a possible model for an entirely new system of in lieu taxes. As such it is suggested that attention be devoted by the Commission to this statute and the approach it represents.

FEDERAL STATUTE DIGEST NO. LK

Act of June 28, 1934 (Taylor Grazing Act)
48 Stat. 1269, 1273, as amended, (1934), 43
U.S.C. §§ 315i, j, m, m-1, m-4 (1964)

I. Background

Historically, the public lands of the western states were considered to be free and open. 1/

It had been a relatively easy matter for Pinchot and other conservationists to obtain Congressional action authorizing the establishment of National Forests in the early 1900's, but the passage of legislation for the protection of the arid grasslands of the West proved to be quite another matter. 2/ Thus, it was not until the Taylor Grazing Act of 1934 that Congress decided to exercise Federal control over the public domain. 3/

The purpose of the Act as stated in the Conference Committee report on the measure was:

> "...to stop injury to the public grazing lands by preventing overgrazing and soil deterioration, to provide for their orderly use, improvement and development, to stabilize the livestock industry dependent upon the public range;..."4/

1/ Judicial sanction was given to this notion by the United States Supreme Court in 1896, the year traditionally associated with the closing of the frontier. The Court said that the right to graze cattle on the public lands resulted from an "implied license, growing out of custom of nearly a hundred years." (Buford v. Houtz, 133 U.S. 320, 326 (1890)). The Court indicated that if legislation closed these lands the "license" would be revoked. See generally, Foss, Phillip O., Politics and Grass, University of Washington Press, Seattle, Washington, 1960, p. 39.

2/ See generally, Peffer, E. Louise, The Closing of the Public Domain, Stanford University Press, Stanford, California, p. 169ff.

3/ 48 Stat. 1269 (1934). Prior to the passage of the Taylor Grazing Act in 1934 the Congress had authorized two limited experiments in grasslands control. These were the Mizpah-Pumpkin Creek Grazing District (45 Stat. 380 (1928)) in Montana and the Owens Valley, California Project (46 Stat. 1530 (1931)). It was partly due to the success of these two projects that prompted Congress to pass the Taylor Grazing Act. Peffer supra note 2 pp. 201, 215. Neither of the two previous experiments, however, provided for revenue sharing.

4/ H.R. Rep. No. 2050, 73d Cong., 2d Sess. 3 (1934). See also Executive Order No. 6910 of November 26, 1934, making the first withdrawals of Taylor Act lands which contains the same language as to the purpose of the legislature. The withdrawals were made under the statutory authority granted to the President to make temporary withdrawals of public lands. 43 U.S.C. § 141 (1964).

The Taylor Act provided that the Secretary of the Interior was to establish grazing districts ("Section 3 Lands") and assess reasonable grazing fees for the use of forage. As originally enacted the Act provided that the money from the fees was to be deposited in the miscellaneous fund of the Treasury. Twenty-five per cent of these fees, when appropriated, were to be used for range improvements, while fifty per cent were to be returned to the States for the benefit of the county in which the district was located. The Act also authorized the Secretary to lease isolated and disconnected tracts of land situated outside the grazing districts ("Section 15 Lands"). The moneys received from these lands were to be distributed in the same manner as those received from Section 3 lands. The fifty per cent formula was not applicable to grazing fees collected from grazing districts on Indian lands ceded to the United States. In this case the Act provided that twenty-five per cent of such fees should be returned to the State to be expended for public schools and roads in the county or counties in which the lands were situated.

In 1947 major changes were made in the revenue sharing provisions of the Act.[4a] The grazing fee was divided into two parts: a range improvement fee and a grazing fee. Only the grazing fee was to be shared with the States for the benefit of the county or counties in which the lands were situated. With respect to Section 3 lands the amount shared was reduced from fifty per cent to twelve and a half per cent. The fifty per cent formula was retained with respect to Section 15 lands. With respect to ceded Indian lands, however, the amount to be shared was increased from twenty-five per cent to thirty-three and a third per cent. The Secretary is also authorized to lease land from private parties and charge a fee for the use of such lands. None of the fees, so collected, are shared with the States.[4b]

4a/ 61 Stat. 790 (1947).

4b/ 43 U.S.C. § 315 m-1, m-4 (1964).

II Provision for Payments and Administration

A. Pertinent text of the statute

43 U.S.C. § 315 i and j, (1964) provide in part as follows:

"Sec. 315i. Disposition of moneys received; availability for improvements.
Except as provided in sections 315h and 315j of this title, all moneys received under the authority of this chapter shall be deposited in the Treasury of the United States as miscellaneous receipts, but the following proportions of the moneys so received shall be distributed as follows: (a) 12½% per centum of the moneys collected as grazing fees under section 315b of this title during any fiscal year shall be paid at the end thereof by the Secretary of the Treasury to the State in which the grazing districts producing such moneys are situated, to be expended as the State legislature of such State may prescribe for the benefit of the county or couties in which the grazing districts producing such moneys are situated: Provided, That if any grazing district is in more than one State or county, the distributive share to each from the proceeds of said district shall be proportional to its area in said district; (b) 25 per centum of all money collected under section 315m of this title during any fiscal year when appropriated by the Congress, shall be available until expended solely for the construction, purchase, or maintenance of range improvements; and 50 per centum of all moneys collected under said section during any fiscal year shall be paid at the end thereof by the Secretary of the Treasury to the State in which the lands producing such moneys are located, to be expended as the State legislature of such State may prescribe for the benefit of the county or counties in which the lands producing such moneys are located: Provided, That if any leased tract is in more than one State or county, the distributive share to each from the proceeds of said leased tract shall be proportional to its area in said leased tract.[5]

"Sec. 315j. Appropriation of moneys received; application of public-land laws to Indian ceded lands; application for mineral title to lands.
When appropriated by Congress, 33 1/3 per centum of all grazing fees received from each grazing district on Indian lands ceded to the United States for disposition under the public-land laws during any fiscal year shall be paid at the end thereof by the Secretary of the Treasury to the State in which said lands are situated, to be expended as the State legislature may prescribe for the benefit of public schools and public roads of the county or counties in which such grazing lands are situated. And the remaining 66 2/3 per centum of all grazing fees received from such grazing lands shall be deposited to the credit of the Indians pending final disposition uner applicable laws, treaties, or agreements."

---

[5] 43 U.S.C. § 315m (1964) refers to isolated tracts located outside of grazing districts, Section 15 lands.

B. Congressional rationale for payments

The Taylor Act as originally enacted provided that fifty per cent of the revenues derived from grazing fees were to be returned to the States for the benefit of the counties in which the fees were collected. The origin of the fifty per cent figure is unknown except that it was arrived at in Committee. A predecessor bill to the Taylor Act contained a twenty-five per cent figure which was quite frankly based on the National Forest formula as the extracts from the Hearings quoted below indicate:

> "Mr Leavitt. How is that 25 per cent arrived at?
> Mr. Ely. It is the same as the Forest Service provision....
> Mr. Leavitt. This 25 per cent, in my judgement, is not enough."[6]

The bill as it emerged from Committee had a thirty-five per cent sharing provision.[7] The bill reached the Senate with the thirty-five per cent figure where it was objected by the Department of Agriculture.

> "The original bill provided...25 per cent for these purposes, to correspond to existing law relative to the disposition of receipts on national forests. The sums thus provided will not only permit consistent and harmonious administration of the public lands in the same locality, but, as has been shown in the case of the national forests, a return to the States of 25 per cent of the receipts is entirely equitable." [8]

H.R. 11816 did not become law, but by the time the bill which eventually became the Taylor Act had reached the Senate for hearings the thirty-five per cent formula had risen to fifty per cent. The twenty-five per cent figure was still advocated by the Government departments on the grounds that what was to become the Taylor Act was not intended as a revenue producing bill. Senator Carey of Wyoming argued forcefully for retaining the fifty per cent figure.

6/ *Hearings Before the House Committee on the Public Lands on H.R. 11816*, 72d Cong. 1st Sess. 62, 64 (1932) (Remarks of Representative Leavitt and Northcutt Ely, assistant to the Secretary of the Interior).

7/ *Id*. at 153.

8/ *Hearings Before the Senate Committee on Public Lands and Surveys on H.R. 11816*, 76th Cong. 2nd Sess. 7 (1933) (Letter of Arthur M. Hyde, Secretary of Agriculture).

> "You are taking away from the State the opportunity to increase its taxable wealth. There is practically no homesteading going on, and I think the 50 per cent should be left in the bill to contribute to the expenses of State Government and not reduce it to 25 per cent." 9/

The Committee reports add little to the above except that they contain letters from the Secretaries of Agriculture and Interior espousing the twenty-five per cent figure obviously without much success. 10/

In 1947 the Act was amended to provide for a different revenue sharing formula (see "I" above). The legislative history of these amendments is meager. The hearings concerning the amendments were not printed and the floor debates give no indication as to the reason for the changes. However, it seems clear that the reason for the reduced sharing formula was that the revenues accruing to the United States under the 1934 formula were insufficient to cover the costs of range management. This view is supported by the below quoted extract from the Senate Report on the amendatory legislation:

> " [The purpose of the amendment is]...to bring into the Federal Treasury sufficient income under grazing fees charged on public lands ..to cover the cost of such administration.
>
> "The bill, by abolishing the present single 'reasonable fee' for use of the grazing districts and establishing two separate fees, one for grazing and one for range improvements, will leave in the Federal Treasury after distribution of the States' share, an income approximately equal to the cost of administration. This has not been true for several years under the present method." 11/

9/ *Hearings Before the Senate Committee on Public Lands and Surveys on H.R. 6462*, 73d Cong. 2d Sess. 103 (1934) (Remarks of Senator Carey).

10/ See H.R. Rep. No. 903, 73rd Cong. 2d Sess. 5-11 (1934) and S. Rep. No. 1182, 73rd Cong. 2d Sess. 3-9(1934).

11/ S. Rep. No. 647, 80th Cong. 2d Sess. 2 (1947). See also Peffer *supra* note 2 at 267-78, where a complete discussion of this legislation may be found. Peffer indicates that the revenue sharing formula was changed as a trade-off against the increasing of the grazing fees. The legislation was also embroiled in the question of adequate appropriations for the management of the range lands.

C. Administration

The statute is administered by the Bureau of Land Management (BLM) of the Department of the Interior. The management activity of BLM so far as the statute is concerned relates to the administration of rangelands situated on the public domain. Such activities include the issuing of permits for use of public domain rangelands and the setting and collection of fees relating to such permits. Pursuant to the statutory authority granted him, the Secretary of the Interior has issued extensive regulations concerning the management of rangelands on the public domain.[12] These regulations include provisions concerning the setting of fees. The regulations do not, however, contain provisions concerning the distribution of receipts received from grazing fees. Provisions governing such distribution are contained in Part 1373 of the BLM Manual. Consequently, the information contained herein has been derived from that manual as well as from personal or telephone interviews with responsible BLM personnel.

D. Lands for which payments are made

The lands with respect to which the statute applies comprise some one hundred and eighty million acres of vacant, unappropriated and unreserved lands of public domain situated in ten western states withdrawn from unrestricted entry which are administered by BLM. These lands comprise fifty-two grazing districts, as well as certain isolated tracts of public domain land situated outside of the grazing districts which may be leased to private parties for grazing purposes, and certain ceded Indian lands.[13]

The statute does not apply to Alaska nor to lands situated in National Forests, National Parks and monuments, and Indian Reservations. O&C lands and Coos Bay Wagon Road lands are also not within the purview of the statute.

---

[12] 43 CFR §§ 4100 et seq. (1967).

[13] The Act does not apply to Alaska. Separate legislation applicable to Alaska was enacted in 1927 (44 Stat. 1452 (1927)). This legislation, which is still in effect, provides for the establishment of grazing districts, for the establishment of grazing fees and for a return to the State of the fees "in excess of the actual cost of administration." Currently the costs of administration exceed the fees collected and so no revenues are shared with Alaska. Telephone interview with Mr. Arnold Petty, Chief Division of Financial Management, Bureau of Land Management, March 29, 1968.

E. Recipient of payments and restrictions on their use

The statute provides that the specified payments are to be made to the State in which the grazing districts or other land producing the revenue is situated to be "expended as the State legislature of such State may prescribe for the benefit of the county or counties" in which the grazing districts or isolated tract outside a grazing district is situated. If the grazing district or isolated tract is located in more than one State or county "the distributive share to each from the proceeds" of such grazing district or leased isolated tract "shall be proportional to its area" in the grazing district or isolated leased tract.

With respect to ceded Indian lands a further restriction is imposed by the statute which requires that the proceeds from leasing fees be paid "to the States in which such lands are situated, to be expended as the State legislature may prescribe for the benefit of public schools and public roads of the county or counties in which such grazing lands are situated."

Because of this requirement BLM breaks down payments to States by grazing districts together with an acreage listing by county. The statute finally provides that payments are to be made at the close of the fiscal year. As a matter of practice the payments are made as soon as practicable after the close of the fiscal year, usually in August.

No attempt is made by BLM or any other Federal agency to enforce the use of the payments for the prescribed purposes. However, BLM does furnish the States with a break-down of the receipts in districts showing the appropriate county acreages so that the States may expend the receipts in the manner prescribed by the statute.

F. Calculation of payments

The statute provides for varying percentages of the receipts received from grazing fees to be distributed to the States for the benefit of the counties in which the land producing the fees is situated. The percentages vary depending on the type of land to which the fees related. The following is a tabular presentation of the provisions of the statute setting forth the payment percentages.

Distribution of Receipts from Grazing Land [14]

§§ 315i Disposition of Money Received from Grazing Districts (§ 3 Lands)	§§ 315m, 315i Disposition of Money from Isolated Tract (§ 15 Lands)	§ 315j Disposition of Money from Ceded Indian Lands.
12½% of grazing fee is returned to the States to be expended as the State legislature prescribes for the benefit of the county or counties in which the land is situated.	25% is used, when appropriated, for maintenance, construction and purchase of range improvements.	33 1/3%, when appropriated, to be returned to the States to be expended as the State legislatures prescribe for the benefit of public schools and roads of the county or counties in which the land is located.
87½% of the grazing fee is deposited in the miscellaneous account of the Treasury.	50% is returned to the States to be expended as the State legislature prescribes for the benefit of the county or counties in which the land is located.	66 2/3% is deposited to the credit of the Indians, pending final disposition under applicable laws, treaties, or agreements.
If the grazing district is in more than one state or county, the return is apportioned according to its area in the grazing district.	If the grazing district is in more than one state or county, the return is apportioned according to its area in the isolated lease tract.	
Range improvement fee, when appropriated, used for range improvements in the county in which the fee was collected.[15]		

---

[14] See also Part 1373 BLM Manual.

[15] Public Land Statistics 1966, p. 177, n. 7. For examples of range improvement appropriations see 78 Stat. 274 (1964); and 79 Stat. 175 (1965).

The Secretary of the Interior has the authority to prescribe "reasonable" grazing fees. [16] Fees for the use of Section 3 lands are divided into two parts: a range improvement fee and a grazing fee. Only the grazing fee is subject to the revenue sharing provisions of the statute. The range improvement fee is used, when appropriated, for improvements in the county in which fees are collected. [17] The total fee charge to range users varies from year to year and is a percentage of the average livestock prices for the preceding year. [18] The fee is stated in terms of a flat rate per animal unit month, ("AUM"), i.e. the range user pays a certain sum per animal per month of grazing. Currently, the fee is thirty-five cents per AUM of which one-third or eleven cents is the range improvement fee and two-thirds or twenty-two cents is the grazing fee. [19]

There are no grazing fees per se for Section 15 lands. There are, however, rental charges which are based on the number of acres under the lease, the estimated grazing capacity in AUMs and the rate per AUM indicated in the current schedule of grazing fees established by BLM. Accordingly, all receipts received from Section 15 lands are subject to the revenue sharing formula applicable to such lands i.e. fifty per cent of the receipts is returned to the states. [20]

It is important to remember that the sharing formula described herein applies only to grazing fees applicable to Section 3 lands and rental receipts for grazing privileges received with respect to Section 15 lands. Other revenues realized from Taylor Act lands may not be subject to sharing provisions at all, e.g. fees from special use permits, are subject to different revenue sharing provisions, e.g. rents, royalties realized from mineral leases. [21]

16/ 43 U.S.C. § 315b (1964).

17/ Public Land Statistics 1966, p. 177, note 7.

18/ 43 C.F.R. § 4115.2-1(k) (1967).

19/ Telephone interview with Glen Fulcher, Chief of Range Management Staff, BLM February 8, 1968.

20/ 43 C.F.R. § 4122.3-3(a)(1967).

21/ 43 U.S.C. §§ 315d, e (1964) specifically authorize mineral leasing and the use of other natural resources on Taylor Act lands. For a discussion of mineral leases on the public lands see Digest LF.

Users of the public lands for grazing purposes are subject to certain restrictions and conditions relating to the purposes of the Act. Thus, there are restrictions as to allowable forage use etc. These restrictions do not affect the fees charged permittees, except, of course by limiting the number of AUMs allowed. Fees may be returned in all or in part to permittees if the range proves unsuitable for grazing due to drought, fire, etc. [22] The amounts returned would not be included in the calculation of the amounts to be shared with the States under the various formulas applicable to grazing lands.

G. Problem areas

As indicated previously, revenues realized from Taylor Act lands are subject to different sharing formulas depending on the type of revenue involved, viz. grazing fees, mineral leases, etc. The Commission should consider whether a single revenue sharing formula might be adopted with respect to all revenues realized from publicly held lands. States and local units of government rely, however, on different forms of taxation for their revenues; the States utilize in the main, sales, use and income taxes; local units of government relying for the most part on property taxes. If revenue sharing is designed to compensate both State and local units of government, any broad gauged revenue sharing formula should take into account these differences. If, on the other hand, revenue sharing is as compensating one or the other levels of government it may be possible to develop a single revenue sharing formula with respect to all revenues which would accomplish this objective.

---

[22] 43 C.F.R. § 4115.2-1(k)(5) (1967); 43 C.F.R. s 4122.3-3(d) (1967).

FEDERAL STATUTE DIGEST NO. LL

Act of March 10, 1943 (Columbia Basin Project Grand Coulee Dam) 57 Stat. 14, 19 (1943), 16 U.S.C. § 835c-1 (1964)

I. Background

The Columbia Basin project is a multi-purpose water development project which was initially authorized in 1935.[1] In order to prevent speculation in large blocks of privately owned land to be served by the project, Congress, in 1937 and again in 1943, authorized the Secretary of the Interior to appraise the land to be irrigated by the project and divide it into family units for sale to settlers.[2] The 1943 legislation also authorized the Secretary of the Interior to enter into agreements to make in lieu of tax payments to any State or political subdivision thereof with respect to real property acquired for the project until the land is disposed of.[3]

II. Provision for Payment and Its Administration

A. Pertinent text of statute:

16 U.S.C. § 835c-1(a) (1964) provides as follows:

> "The Secretary may enter into agreements to pay annual sums in lieu of taxes to any State or political subdivision thereof with respect to any real property situated therein after it is acquired pursuant to the authority of Sections 835 to 835c-5 of this title and before execution by the United States of a contract of sale covering it, out of funds derived from the leasing of such lands. The amount so paid for any year upon any such property shall not exceed the taxes that would be paid to the State or subdivision as the case may be upon such property if it were not exempt from taxation thereby."

B. Congressional rationale for payments:

The only reference in the legislative history as to the purpose of the provision is in the House Committee on Irrigation and Reclamation's report on the bill which states that the purpose is

---

[1] 49 Stat. 1028 (1935).

[2] 16 U.S.C. § 835a (1964) - As condition to receive water owners of excess land, i.e. land in excess of family-sized units, were required to dispose of such excess land at the Secretary's appraisal price.

[3] 16 U.S.C. § 835c-1(a) (1964).

> "to avoid disruption of local political economies by providing tax payments in lieu of taxes on lands acquired under the authority of the bill".[4]

C. Administration:

The statute is administered by the Bureau of Reclamation, Department of the Interior. There are no departmental files, regulations, manuals, guidelines, instructions, etc. which specifically relate to the implementation of the payment provision.[5] However, pursuant to the authority granted to the Secretary of Interior four agreements for payments in lieu of taxes were entered into in 1948.

D. Lands for which payments are made:

The statute authorizes payments with respect to real properties acquired in connection with the Columbia Basin project.

E. Recipients of payments and restrictions on their use:

The statute authorizes the Secretary of Interior to "enter into agreement to pay annual sums in lieu of taxes to any State or political subdivision thereof with respect to any real property situated therein after it is acquired" for the project. In 1948 four identical agreements were entered into with Adams, Franklin, Grant and Walla Walla Counties in Washington. The statute is silent as to when the payments are to be made but the agreements entered into by the Secretary of Interior specify that the payments be made on or before July 10th of each year. No restrictions are imposed by either the statute or the agreement on the use of the payments received by the four counties.

F. Calculation of payments:

The only restriction which the statute imposes on the payments is that they "shall not exceed the taxes that would be paid to the State or subdivision as the case may be upon such properties if it were not exempt from taxation." In fact, the agreements provide that the payments made will be the smaller of "(a) fifty per cent of the aggregate funds derived by the leasing of such lands or (b) a sum equal to the taxes which would have been assessed against such lands during said calendar year, if they had been subject to taxation." These agreements are still in effect and information received from the Bureau of Reclamation indicates that payments have always been made on the basis of fifty per cent of leasing receipts.[6/]

---

[4] H. R. Rep. No. 2618, 77th Cong., 2d Sess. 1 (1942).

[5] Letter (with enclosures) dated 11/15/67 from James S. Reece, Chief Division of Audit and Financial Review, Bureau of Reclamation, EBSMC PLLRC File No. 209.

G. Problem areas

Consideration should be given as to whether an administrative agency should be given such sweeping powers in determining payments in lieu of taxes.

[6/] Letter (with enclosures) dated 7/20/67 to EBSMC from Val G. Killin, Acting Assistant Commissioner, Bureau of Reclamation, EBSMC PLLRC File No. 423.

FEDERAL STATUTE DIGEST NO. LM

Act of July 22, 1937 (The Bankhead-Jones Farm Tenant Act)
50 Stat. 522, 526 (1937), 7 U.S.C. § 1012 (1964)

I. Background

In 1919, the Federal Government began studies concerning the feasibility of Federal acquisition of submarginal private lands.[1] The Depression provided the opportunity for the Federal Government to acquire submarginal lands which could not adequately support families. These purchases were made under various programs, *e.g.*, the Agricultural Adjustment Act,[2] the National Industrial Recovery Act,[3] and the Bankhead-Jones Farm Tenant Act.[4] By purchasing these lands Congress hoped to correct maladjustments in land use, control soil erosion and preserve the nation's resources.

As part of the land acquisition authority granted the Secretary of Agriculture under Title III of the Bankhead-Jones Farm Tenant Act, Congress provided that the counties were to receive twenty-five per cent of the net revenues produced by the land acquired within their boundaries. The Secretary's authority to acquire land under the Act was revoked by Congress in 1962.[5] However, the revenue sharing provision was not changed so that the counties continue to be compensated for the land previously acquired and removed from the counties' tax rolls.

II. Provision for Payments and its Administration

A. Pertinent text of the statute

7 U.S.C. § 1012 (1964) provides as follows:

> "As soon as practicable after the end of each calendar year, the Secretary shall pay to the county in which any land is held by the Secretary under Section 1010-1013 of this title, 25 per centum of the net revenues received by the Secretary from the use of the land during such year. In case the land is

---

[1] These submarginal lands were located for the most part in the western states and were of a type which produce good crops in rainy years, but no crops in years of even slight drought.

[2] 48 Stat. 199 (1933).

[3] 48 Stat. 195 (1933).

[4] 50 Stat. 522 (1937).

[5] 76 Stat. 607 (1962).

> "situated in more than one county, the amount to be paid shall be divided equitably among the respective counties. Payments to counties under this section shall be made on the condition that they are used for school or road purposes, or both. This section shall not be construed to apply to amounts received from the sale of land."

B. Congressional rationale for payments

The legislative history of this provision indicates that it was intended as a "payment in lieu of taxes".[6] The hearings on the bill are in accord with this interpretation and they indicate that the provision was patterned after the revenue distribution formula for National Forests and that it was designed to compensate local governments for revenue losses which would be occasioned by the acquisition of land by the Federal Government.[7] It is not clear why the term "net revenues" was used. According to a decision of the Comptroller General, the term "net revenues" was intended to refer to "receipts rather than income after deducting expenses etc.", i.e., gross receipts "less applicable refunds and adjustments".[8] The decision is an interpretation of the legislative history of the statute, but it does not give specific citations for this interpretation. In practice, it is gross receipts rather than net revenues which are shared. The committee reports throw no light on the provision.[9]

---

[6] 81 Cong. Rec. 6478 (1937) (remarks of Representative Cooley).

[7] Hearings before the House Committee on Agriculture on Farm Tenancy, H.R. 7562, 75th Cong., Sess. 110 (1937) (remarks of Mr. Doxey).

[8] 17 Comp. Gen. 768, 769 (1938).

[9] See, e.g., H.R. Rep. No.586 75th Cong., 1st Sess. (1937).

C. Administration

The administration of the statute and the revenue sharing provision is divided between the Forest Service and the Bureau of Land Management. The reasons for this dual administration are as follows.

In 1953 the jurisdiction over eight million acres of these Title III lands situated within the exterior boundaries of National Forests was transferred, purusant to Executive Order,[10] within the Department of Agriculture from the Soil Conservation Service to the Forest Service, such lands becoming part of the National Forests in which they were located. The Soil Conservation Service does retain, however, control over a small portion of these "land utilization lands" which it runs as nurseries.[11]

In 1958, President Eisenhower transferred some two and a half million acres of Title III lands from the Department of Agriculture to the Department of the Interior.[12] The management of these transferred lands is lodged with the Interior Department's Bureau of Land Management, and the lands themselves are administered under the Taylor Grazing Act for grazing purposes. Nevertheless, twenty-five per cent of the net revenues received from such lands by the Secretary of Interior from grazing and other uses are paid to the counties in which the land is situated to be used for schools or roads.[13] These payments are in lieu of the payments which the States and counties would otherwise receive under the Taylor Grazing Act "or any other Act under which the transferred lands will be used and administered".[14] A smaller quantity was also transferred, with a similar provision, in 1960.[15]

---

[10] Exec. Order No. 10445, 3 C.F.R. 934 (1948-53 Comp.).
[11] 7 C.F.R. § 600.5 (1966).
[12] Exec. Order No. 10787, 3 C.F.R. 424 (1954-59 Comp.).
[13] Ibid.
[14] Ibid.
[15] Exec. Order No. 10890, 3 C.F.R. 417 (1959-63 Comp.).

In 1960, the Secretary of Agriculture designated certain of the Title III lands acquired by the Department of Agriculture as "National Grasslands".[16] The responsibility for these lands is lodged with the Forest Service.

D. Lands for which payments are made

The payments are made with respect to lands acquired under the original 1937 legislation, whether such lands are administered by the Forest Service or the Bureau of Land Management.

E. Recipients of payments and restrictions on their use

The Statute directs that twenty-five per cent of the net revenues realized from Bankhead-Jones lands be distributed "as soon as practicable after the end of each calendar year" to the county in which such land is located. The distributed revenues must be used "for school or road" purposes.

F. Calculation of payments

The term net revenues has been interpreted to mean gross receipts less applicable refunds and adjustments.[17] In practice refunds and adjustments usually apply to grazing fees. These fees are paid in advance, but in some cases the range leased proved unsuitable for use because of drought or fire, etc. In such situations, all or part of the fee is refunded to the permittee and the amount refunded is not included in the calculation of the amounts distributed to the counties. As indicated previously, the term net revenues has been construed to mean receipts and , in practice, receipts are used in determining the amounts to be distributed.

As a matter of practice, however, this procedure of deducting refunds and adjustments does not seem to apply to the National Grasslands. These areas are managed under the direction of the Forest Service by private grazing associations which collect the grazing fees, deduct their expenses and make other necessary adjustments before turning the money over to the Department of Agriculture.[18]

---

[16] 36 C.F.R. § 213 (1966). The National Grasslands comprise some 3,804,000 acres of land and are situated in eleven western states. Their purpose is to serve as "demonstration acres to show how lands classified as unsuitable for cultivation may be converted to grass for the benefit of both the land and people in the areas." Agricultural Economic Report No. 85 *The Land Utilization Program 1934 to 1964*, U. S. Department of Agriculture, Economic Research Service, USGPO (1965), p.31.

[17] See text accompanying note 8 supra.

[18] Telephone interview on August 17, 1967 with Virgil R. Carrell, Special Staff Assistant, Programs and Legislation, U.S. Department of Agriculture.

The practices and methods of computing revenues from grazing fees, mineral leases, and sales of materials have been described in full in digests LK, LF, and LQ. These practices and procedures are applicable to the lands covered by this revenue sharing provision.

Regardless of which agency administers the lands, payments are made according to the statutory formula except in the case of lands transferred to National Forests.[19/] This is required by the Executive Orders transferring[20/] some of the lands to the Department of the Interior and would be required in any case insofar as mineral leases are concerned on acquired lands.[21/]

Revenues are derived from several sources: grazing fees, mineral leases, and sales of materials. Grazing fees and receipts from sales of materials are collected by both the Forest Service and the Bureau of Land Management, depending upon which agency is administering the land. Mineral leases, on the other hand, are managed by the Bureau of Land Management regardless of whether the leases relate to lands managed by the Forest Service or the Bureau. The practices of the two agencies are similar if not identical. Thus, each makes payments "as soon as practicable after the end of each calendar year," generally in February.[22/] Both agencies submit vouchers to the Treasury for the payments due but each agency sends the checks themselves, accompanied by material identifying the program to which the payments relate and the lands to which they relate.[23/] Where the land to which the payments relate is situated in more than one county, both agencies interpret the statutory requirement that such payments be divided "equitably" between the counties to mean that the payments will be proportioned to the acreage in each county.[24/] This procedure follows the statutorily prescribed practice set forth in the National Forest Reserves Act of 1908 and the Taylor Grazing Act of 1934.

[19/] In this case, revenues would be distributed according to the formula applicable to National Forests. Tit. 6531.12b-9 FSM (1966).

[20/] Supra notes 12 and 15.

[21/] 43 U.S. C. § 355 (1964).

[22/] Interview with Arnold Petty, Chief, Division of Financial Management Bureau of Land Management March 22, 1968; telephone interview with Glenn C. Todd, Director, Budget and Finance Section, Forest Service, March 21, 1968.

[23/] Ibid.

[24/] Ibid.

Neither agency conducts an audit to determine whether the payments received are used for the purposes specified in the statute; namely, for "school or road purposes". The agencies do not feel that it is their responsibility to make such an audit. [25]

G. Problem areas

This statute is based on and closely parallels the National Forest Revenues Act (Digest LB). Nevertheless, it contains significant differences, *e.g.*, payments are made to counties rather than States, and the payments are on a calendar-year basis rather than on a fiscal-year basis. Consideration should be given to whether these statutes can be better aligned, the objective being to simplify the whole revenue sharing system.

Another significant aspect is that the Bankhead-Jones Act controls sharing of revenues, no matter under what act derived. This is contra to the practice under the Mineral Leasing Act of 1920.

---

[25] *Ibid.*

FEDERAL STATUTE DIGEST NO. LN

Act of August 18, 1941 (Acquisition of land by the Army Corps of Engineers for Flood Control), 55 Stat. 638, 650, as amended, (1941), 33 U.S.C. § 701c-3 (1964)

I. Background

The Lower Mississippi River Flood Control Act of 1938[1] was the first "rivers and harbors" bill which provided for sharing of revenues realized from lands acquired by the Federal Government for flood control purposes. The act provided that twenty-five per cent of revenues received from leasing of lands acquired for flood control purposes were to be distributed to the States to be expended as the State legislatures prescribed, for the benefit of schools and roads of the counties in which the land was situated.

In 1941, Congress authorized a number of river and flood control projects which were to be managed by the Army Corps of Engineers.[2] This act extended the twenty-five per cent revenue sharing provision to all flood control projects in the nation. In 1946, the Flood Control Act was amended.[3] The provision for revenue sharing was increased from twenty-five to seventy-five percent of the moneys received from the rental of lands.

In 1954, the source of revenues was enlarged to include the leasing of lands acquired for navigation and allied purposes, and the development of hydroelectric power.[4]

II Provision for Payment and its Administration

A. Pertinent text of the statute

Section 701c-3 of the Act provides as follows:

> "75 per centum of all moneys received and deposited in the Treasury of the United States during any fiscal year on account of the leasing of lands acquired by the United States for flood control, navigation, and allied purposes, including the development of hydro-electric power, shall be paid at the end of such year by the Secretary of the Treasury to the State in which such property is situated, to be expended as the State legislature may prescribe for the benefit of public schools and public roads of the county, or counties, in which such property is situated, or for defraying any of the expenses of county government in such county or counties, including public obligations of levee and drainage districts for flood control and drainage improvements: Provided, That when such property is situated in more than one State or county, the distributive share to each from the proceeds of such property shall be proportional to its area therein."

---

[1] 52 Stat. 1215, 1222, (1938).
[2] 55 Stat. 638, 650 (1941).
[3] 60 Stat. 642 (1946), 33 U.S.C. § 701c-3 (1964).
[4] 68 Stat. 1266 (1953).

B. Congressional rationale for payments

While the legislative history of the original 1938 Act does not reveal a specific reason for the revenue sharing provisions, the legislative history of the 1946 Act makes it clear that it was intended to compensate the local taxing units for the loss of tax revenues.

The hearings held by the House Committee of Flood Control[5] clearly show that there was fear on the part of many communities of a loss in tax revenues:

> "Taxpayers of this area who would be adversely affected by the construction of this proposed dam [Port Oliver Dam on the Baren River in Kentucky] are of the opinion that such a dam is not needed and that its construction would result, not only in the destruction of...valuable farm land, but also result in the loss of vitally needed tax revenues which would prove detrimental to both the schools and road systems...."[6]

This same concern was brought out in the hearings held by the Senate Committee on Commerce. The Secretary of the Interior made the following comments in a letter to the Committee Chairman in which he opposed the increase in the formula from twenty-five per cent to seventy-five per cent:

> "The proposed increase from 25% to 75% is not in line with the recommendations of the Federal Real Estate Board which found the 25 percent rate generally satisfactory for flood control lands.... The Board points out that those projects are usually initiated in response to local interest, and that the amount of taxes on the property to be removed from the tax rolls are (sic.) one of the factors to be considered in deciding on a project." [7]

The report of the House Committee on Flood Control made the following statement on its decision to recommend the seventy-five per cent revenue sharing formula:

> "Experience has shown that the payment to States of 25 percent of the moneys received from the rental of land does not adequately compensate the local taxing units for the loss of taxes. Strong representations were made to the committee that it is only just and right that these taxing units should be made whole for their loss. The committee has, therefore, recommended that 75 percent of all moneys received from the leasing of such lands be paid to the States." [8]

---

[5] Hearings before the House Committee on Flood Control on H.R. 6597, 79th Cong., 2d Sess. (1946).

[6] Id. at 232 (Statements of Rep. Earle C. Clement).

[7] Id. at 247.

[8] H.R. Rep. No. 2165, 79th Cong., 2d Sess. 7 (1946).

C. Administration

The Corps of Engineers administers the statute and has issued regulations which describe its policies for the leasing of real property within projects. These regulations break the property down into several different classes depending upon the use to which they are to be put.[9] All revenues received from leasing of project property are paid into special accounts which are administered locally by the District offices. The distribution of revenues to the State governments is made at the end of the fiscal year. The payments are made by checks drawn on the United States Treasury. They are sent out from the District office accompanied by a letter identifying the payments.

D. Lands for which payments are made

The statute provides for the distribution of revenues realized from leasing of lands acquired for flood control, navigation and allied purposes (including hydroelectric power).

E. Recipient of payments and restrictions on their use

The payments are made to the State government to be expended as the legislature may prescribe for the benefit of the county in which the land is located. If the land is situated in more than one county then the distributive share to each from the proceeds of such property is proportional to its area therein. The payment may be used for public schools, roads or defraying any of the expenses of the county government.[10] There is no audit made on the use of the payments.

F. Calculation of payments

The revenue sharing provision is only applied to receipts from leases on lands within project boundaries. It is not applied to receipts from easements or from licenses. All lands to be leased are broken down into different classes, depending upon the use to be made of them.[11] The rental rates vary for different classes of leases. Payments are calculated on the basis of seventy-five per cent of the gross receipts. There are no deductions made for administration costs.

---

[9] Regulations of the Corps of Engineers, Regulation No. 405-1-830 (1964) EBSMC PLLRC File No. 206.

[10] Telephone conversation with Mr. William Genung, Chief of Budget and Programs, Real Estate Branch, Corps of Engineers, April 4, 1968. The statute was amended in 1953 to provide that the revenues received may be used to defray the expenses of county government as well as for the use of public schools and roads. 67 Stat. 61 (1953).

[11] Supra note 9.

FEDERAL STATUTE DIGEST NO. LO

Act of December 22, 1944 (The 1944 Rivers and Harbors Act)
58 Stat. 887, 905 (1944)

I. Background

In 1944 Congress authorized eleven watershed improvement projects and designated the Secretary of Agriculture to take charge of their implementation. Work was not to begin until after the close of World War II. The Secretary was given authority to acquire land in order to carry out the work of improving run-off and water flow retardation. The legislation also provided that, with respect to any land acquired for the eleven designated projects, annual in lieu of tax payments were to be made to the county in which such lands were situated. Work began in 1946.[1] However, according to representatives of the Department of Agriculture no land has in fact been acquired.[2] Congress revoked the Secretary's authority to make any new examinations and surveys in 1954 but left untouched his administration of the eleven projects already authorized.[3] The Secretary's authority was enlarged in 1962 to provide for the prosecution of additional works of improvement in cooperation with local authorities.[4]

II. Provision for Payments and its Administration

A. Pertinent text of statute

Section 13 of the Act provides in part follows:

> "...Provided further, That there shall be paid annually to the county in which any lands acquired under this section may lie, a sum equal to 1 per centum of the purchase price paid for the lands acquired in that county or, if not acquired by purchase, 1 per centum of their valuation at the time of their acquisition."[5]

---

[1] 7 C.F.R. § 600.2 (1967).

[2] Telephone interviews with Mr. Harold Morey, National Forest System, Forest Service and Mr. George Philips, Soil Conservation Service, March 22, 1968.

[3] 68 Stat. 666,668 (1954).

[4] 76 Stat. 604,610 (1962).

[5] 58 Stat. 887, 905 (1944)

B. Congressional rationale for payments

The payment in lieu of tax provision was introduced by Senate conferees; however, their explanation of their actions is limited to the following:

> "This amendment of the Senate as modified provides that in connection with the works authorized to be undertaken by the Department of Agriculture land may be acquired only with the consent of the States and it lessens the burden of local communities of removal of large areas from taxation by providing for payments to local governments in lieu of the taxes on the land acquired."6/

C. Administration

The Secretary has delegated responsibility for administration of the statute to the Soil Conservation Service except with respect to National Forest lands.7/ Since no lands have been acquired to which the in lieu of tax provision relates, there have never been any payments made under the statute.8/ Furthermore, neither the Forest Service or the Soil Conservation Service has any regulations, manuals, memoranda etc. pertaining to the in lieu of tax provision.9/

D. Lands for which payments are made

The in lieu of tax provision relates only to lands acquired for the following watershed improvement projects.

1. Los Angeles River Basin (California)
2. Santa Ynez River Watershed (California)
3. Trinity River Basin (Texas)
4. Little Tallahatchie River Watershed (Mississippi)
5. Yazoo River Watershed (Mississippi)
6. Coosa River Watershed (Above Rome, Georgia)
7. Little Sioux River Watershed (Iowa)
8. Potomac River Watershed (Maryland, Pennsylvania, Virginia, W. Virginia)
9. Buffalo Creek Watershed (New York)
10. Colorado River Watershed (Texas)
11. Washita River Watershed (Oklahoma)

The statute also provides that lands may only be acquired with state consent.

6/ H.R. Rep. No. 2051, 78th Cong., 2d Sess. 13 (1944).

7/ 7 C.F.R. § 600.2 (1967); tit. 2561 FSM (1966).

8/ Morey and Phillips interview, supra note 2.

9/ Ibid.

E. Recipients of payments and restrictions on their use

The statute provides that annual payments be made to the counties in which the lands acquired for the eleven designated projects are located. It imposes no restrictions on the use of such payments.

F. Calculation of payments

The county is to receive an annual payment equal to one per cent of the purchase price paid for the lands acquired or if the lands were not purchased, the payment is to equal one per cent of the valuation at the time of acquisition. No payments have ever been made.

FEDERAL STATUTE DIGEST NO. LP

Act of August 1, 1946 (the "Atomic Energy Act of 1946")
60 Stat. 755, 765-66, as amended, (1946);
42 U.S.C. § 2208 (1964)

Act of August 4, 1955 (The "Atomic Energy Community Act of 1955") 69 Stat. 471, 481, as amended (1955)
42 U.S.C. § 2391 (1964)

I. Background

The Atomic Energy Commission was established in 1946 to carry out the policy of the development, use and control of atomic energy.[1] Among the other powers granted to the AEC was the power to acquire real and personal property.[2] Under the 1946 legislation the AEC was also authorized to make payments in lieu of taxes "to those States and localities in which the Commission has acquired property previously subject to State and local taxation...."[3] The statute permits the Commission to make payments "in the amounts, at the times, and upon the terms the Commission deems appropriate, but the Commission shall be guided in the policy of not making payments in excess of the taxes which would have been payable for such property in the condition it was acquired...." [4]

In the course of its activities the AEC built a number of plants at remote locations and also built communities to house its personnel living in these areas. In 1955 the Congress adopted a policy of terminating Government ownership and management of the communities owned by the AEC, in order to facilitate local self-government.[5] The AEC accordingly disposed of most of its non-plant and laboratory property, e.g., residences, schools, churches, etc. to private purchasers. Because, however, the AEC retained ownership of its plant properties which would normally sustain a large portion of the local tax burden, if such property was subject to local taxation, the Congress provided for special assistance payments of "just and reasonable sums" to be made to those communities which had been formerly owned and managed by the AEC.[6] These payments are required and the three communities designated by the statute as eligible for such payments are Oak Ridge, Tennessee; Richland, Washington; and Los Alamos, New Mexico.[7] These payments are essentially "impact" type payments.

---

[1] 42 U.S.C. § 2011 et seq. (1964).
[2] 42 U.S.C. § 2201(g) (1964).
[3] 42 U.S.C. § 2208 (1964).
[4] Ibid.
[5] 42 U.S.C. § 2301 (1964).
[6] 42 U.S.C. § 2391 (1964).
[7] 42 U.S.C. § 2304(b) (1964).

II. Provision for Payments and its Administration

A. Pertinent text of Statute

42 U.S.C. § 2208 (1964) provides as follows:

> "In order to render financial assistance to those States and localities in which the activities of the Commission are carried on, and in which the Commission has acquired property previously subject to State and local taxation, the Commission is authorized to make payments to State and local governments in lieu of property taxes. Such payments may be in the amounts, at the times, and upon the terms the Commission deems appropriate, but the Commission shall be guided by the policy of not making payments in excess of the taxes which would have been payable for such property in the condition in which it was acquired, except in cases where special burdens have been cast upon State or local government by activities of the Commission, the Manhattan Engineer District or their agents. In any such case, any benefit accruing to the State or local government by reason of such activities shall be considered in determining the amount of the payment."

42 U.S.C. § 2391 (1964) provides as follows:

> "(a) Annual assistance payments.
>
> "From the date of transfer of any municipal installations to a governmental or other entity at or for the community, the Commission shall, for a period of ten years, make annual assistance payments of just and reasonable sums to the State, county, or local entity having jurisdiction to collect property taxes or to the entity receiving the installation transferred hereunder. In determining the amount and recipient of such payments, the Commission shall consider--[8]
>
> > "(1) the approximate real property taxes and assessments for local improvements which would be paid to the governmental entity upon property within the community if such property were not exempt from taxation by reason of Federal ownership;
> >
> > "(2) the maintaining of municipal services at a level which will not impede the recruitment or retention of personnel essential to the atomic energy program;

---

[8] The ten-year period was extended for an additional ten years in 1967, 81 Stat. 575 (1967).

"(3) the fiscal problems peculiar to the governmental entity by reason of the construction at the community as a single purpose national defense installation under emergency conditions; and

"(4) the municipal services and other burdens imposed on the governmental or other entities at the community by the United States in its operations in the project area.

"(b) Special interim payments.

"Special interim payments may be made under the provisions of this section to any governmental entity which--

"(1) has a special burden due to the requirements under law imposed upon it in assisting in effectuating the purposes of this chapter for which it will not otherwise receive adequate compensation or revenues; or

"(2) will suffer a tax loss or lapse in place of which it will not receive any other adequate revenues until the new governmental entities contemplated by this subchapter are receiving their normal taxes and performing their normal functions.

"(c) Payments for special burdens.

"Payments made under this section shall be payments made for special burdens imposed on the local governmental entities in accordance with the second sentence of section 2208 of this title. Payments may be made under this section notwithstanding the provisions of sections 236--245 of Title 20.

"(d) Recommendation for further contribution payments.

"With respect to any entity not less than six months prior to the expiration of the ten-year period referred to in subsection (a) of this section, the Commission shall present to the Joint Committee on Atomic Energy its recommendation as to the need for any further contribution payments to such entity. If it recommends further contribution payments, it shall propose a definite schedule of such contribution payments which will provide for an orderly and reasonably prompt withdrawal of the Atomic Energy Commission from participation in and contribution toward local government."

B. Congressional rationale for payments

With respect to the in lieu of tax payments which the AEC is authorized to make with respect to property it has acquired, the legislative history is silent. However, the statute itself contains its own statement of Congressional purpose.

With respect to the special assistance payments which are made to the three designated communities, the Senate report dealing with the 1955 legislation gives an excellent summary for the payment provision.

> "Section 91. Basis of assistance to cities and other State and local entities.--This section requires the Commission to make annual assistance payments to any local governmental entity which has received a municipal installation. In determining the amount of the taxes the Commission is required to consider the approximate real property taxes it would pay on property within the community if the property were not exempt from taxation because of Federal ownership. It is also required to maintain municipal service at a level which will not impede the recruitment of personnel and is required to consider the problem peculiar to the Government because of its construction as a single-purpose national-defense installation under emergency conditions and the burdens imposed on the Government by reason of the Government operations in the project area. In an effort to give specific direction to these general purposes it is provided that the normal assistance is to be based upon the differences between the costs of operating the governmental unit on a par with the upper quartile of such units in the United States and the revenue received by that unit. However, in making charges for the purpose of this computation, the taxes to be charged by the governmental unit are not to be less than the average charge in the immediate vicinity of the community.
>
> "The Government has established both the atomic energy plants and the community at both Oak Ridge and Richland. It has decided that the geographical limits of the community shall extend only to the residential and commercial areas and not to the plant areas where the existence of plants outside of the communities and for which the communities were established place a large burden on the communities. If this had been a normal municipal development the citizens in the community could have voted to extend the community boundaries to include the industrial areas within the city. Even if at some future time these plants of the Federal Government should be incorporated within the city limits it would be unfair on the Federal Government to pay the tax equivalent based on the theory, which has already

"been approved by the Commission, that the Federal Government should pay taxes for these plants in the same rate as if they were privately owned. The valuation of these plants runs to many hundreds of millions of dollars, if not to billions of dollars. Therefore, the only fair principle to consider in arriving at the rate for the assistance is the principle of having the Federal Government pay for those burdens imposed on the city for which the city does not otherwise obtain adequate revenues.

"Under normal industrial situations the plants would be paying taxes to the city which would normally carry a large part of the load. That the plants are owned by the Federal Government should not exempt the Federal Government from recognizing the burden which those plants necessarily impose on the local governments and in assisting the governments to the extent that there are not revenues available to meet those burdens. This principle has already been recognized in the Atomic Energy Act of 1954 in language which has been retained verbatim from the Atomic Energy Act of 1946. That language, in section 168, provides that 'Such payments may be in amounts, at the times, and upon the terms the Commission deems appropriate, but the Commission shall be guided by the policy of not making payments in excess of the taxes which would have been payable for such property in the condition in which it was acquired, except in cases where special burdens have been cast upon the State or local government by activity of the Commission, the Manhattan Engineering District, or their agents.' [Emphasis added.]

"The special burden which will be imposed on these communities is the burden of maintaining services which will attract the caliber of the personnel which are needed to maintain the atomic energy plants. The Commission, so far as is known to this committee, has failed to recognize that it has thrown special burdens on any local government despite the wording in the present statute.

"The Commission has proposed in its original draft as well as in its letter of July 22, 1955, that it abandon its responsibilities for these burdens and that it lay upon the shoulders of the employees it has brought into these plants the full cost of these responsibilities. It has established a high level of services, in its communities and especially in the school systems.

> "Yet the Commission would hope to force the local residents at some time to assume full responsibility for these high levels of service regardless of the existence or nonexistence of other revenues from which these burdens can be met.
>
> "The tax rate for computing the revenues was stated at not less than the average tax rate for similar municipal installations in the area. The reason for this is obvious. If new inhabitants and new industries are to be attracted to the communities in order to help diversify the economic base of these communities, they must not be repelled at the start by a tax rate which, as has been computed by the Commission, will be substantially higher than the tax rates in the areas immediately around the communities. The imposition of such a higher tax rate will only serve to drive other people and industries away from the communities.
>
> "In order to meet the needs of those local governmental units which will have a sudden flood of work for which there are not adequate revenues, such as the recording of the deeds, the Commission is authorized to make additional payments to cover those costs for which the local governments do not receive adequate revenues. In addition the Commission is authorized to make special interim payments where there are tax losses or lapses due to the inability of new governmental units to obtain tax funds the instant they are established."[9]

C. Administration

The AEC administers both the in lieu tax provision and the special assistance payments made to the three designated communities. The AEC has not promulgated any rules or regulations regarding these payments, however, but is guided by internal policy guidelines. Consequently, the information contained herein has been derived from personal or telephone interviews and correspondence with responsible AEC personnel.

D. Lands for which payments are made

In lieu of tax payments are authorized by the statute to states and local units of government with respect to property which the AEC has acquired previously subject to State and local taxation.

Special assistance payments to Oak Ridge, Richland and Los Alamos are required for a ten year period after the date of transfer of anv municipal installations (schools, hospitals, etc.) to them, or to a governmental entity on their behalf.

---

[9] S. Rep. No. 1140, 34th Cong., 1st Sess. 14-16 (1955).

E. Recipients of payments and restrictions on their use

With respect to the in lieu tax payments, payments are made to local units of government where the AEC has acquired property only upon request. There are no restrictions on the use to which recipient local units of government may put such moneys.

With respect to the "impact" type payments made to Los Alamos, Richland, and Oak Ridge the AEC also imposes no restriction as to the use to which these payments may be put.

F. Calculation of payments

So far as the in lieu payments to local communities are concerned, according to representatives of the AEC, the AEC has delegated the authority to make such payments to the managers of the AEC's field offices unless the payments are on account of back years. Payments for back years may be authorized by the AEC's General Manager unless they are in excess of $50,000, in which event they must be submitted to the AEC itself.

The AEC's guidelines relating to the in lieu payments state that they are to be computed on the basis of the assessed value of the acquired property for the last year during which such property was subject to taxation and the tax rate for the year to which the payment is applicable.[10] Alternatively, if the local units of government and the Commission agree, payments may be a fixed annual amount based upon the taxes paid in the last year in which the property was subject to local taxation. Pursuant to the authority granted to them by the AEC, managers of field offices can grant requests to switch from a fixed yearly payment to one based on the current tax rate when a local government unit, which previously had been receiving a fixed yearly payment, increases its tax rate.

Local governments must request the in lieu of tax payments each year before they are made. The request is generally a formality after the first payments have been made. Payments are made after the request has been approved and a valid and binding release or settlement has been obtained from the local unit of government making the request.

The statute also includes a provision which permits the Commission to make payments in excess of the taxes which would have been payable "...in cases which special burdens have been cast upon the State or local government by activities of the Commission, the Manhattan Engineer District or

---

10/ Letter with enclosures dated July 11, 1967 to EBSMC by Edwin E. Ferguson, Associate General Counsel for the Commission. EBSMC PLLRC File #208.

their agents. In any such case, any benefit accruing to the State or local government by reason of such activities shall be considered in determining the amount of the payments."

The AEC requires that all requests for payments in lieu of taxes, which involve weighing the burdens and benefits and which would result in greater payments than on a tax loss basis, be presented to the General Manager for consideration on a case-by-case basis. In lieu payments have thus far been made only on a tax loss basis. The AEC has adopted no general policy covering payments in lieu of taxes in cases involving applications on a "burdens and benefits" basis, but considers any such request on an individual basis.

With respect to the "impact" payments to the three statutorily designated communities, the AEC is only required to make annual payments of "just and reasonable sums". The AEC has no regulations detailing what constitutes "just and reasonable sums", but does have internal policy "guides" which it uses to determine such amounts. These guides include such factors as: (1)provisions by the recipient community to maintain an adequate level of services (generally considered to be those formerly provided by the AEC); (2) reasonable efforts by the community to levy its own taxes and obtain State financial assistance; (3) the requirements that charges by the community for services be comparable to those charged by other communities in the vicinity; (4) provision that wages and salaries of community employees be competitive with those prevailing in nearby communities; and (5) consideration of normal annual debt service requirements.[11] These factors are basically "cost" factors of providing community government and service.

Requests for assistance payments by the three communities are made in April or May. The actual timing of the payments to each community varies depending on the individual arrangements made between the AEC and the community involved.

---

[11] Ibid. Supplemented by informal contacts and interviews with other AEC personnel.

FEDERAL STATUTE DIGEST NO. LQ

Act of July 31, 1947 ("Disposal of Materials from Public Lands"), 61 Stat. 681, as amended, (1947), 30 U.S.C. §§ 601-03 (1964)

I. Background

In 1944, Congress authorized the Secretary of the Interior to sell certain raw materials[1] from public lands under his control.[2] This act provided that the States were to receive the same percentage of the revenue from the sale of these materials as they did from the sale of public lands within their borders, *i.e.*, five per cent of the net proceeds.[3]

As a result of this wartime experience, Congress, in 1947, permanently authorized the Secretary of the Interior to dispose of these materials. The permanent legislation contained the same revenue sharing provision as the temporary act.[4]

In 1950 an exception was made with respect to moneys received from the disposal of materials from school section lands in Alaska. The money from these lands is to be set apart in a separate and permanent fund in the Territorial (State) Treasury for the use of the schools.[5]

The original act provided only for the sale of materials from public lands under the control of the Secretary of the Interior. In 1955 Congress amended the act to provide for the sale of materials by the Secretary of Agriculture from lands which are under his administration.[6]

---

[1] Sand, stone, gravel, yucca, manzanita, mesquite, cactus, clay, timber, and other forest products.

[2] 58 Stat. 745 (1944).

[3] See statutes listed in Digest LA.

[4] 30 U.S.C. §§ 601-03 (1964).

[5] 64 Stat. 571 (1950).

[6] 69 Stat. 368 (1955).

II. Provision for Payments and its Administration

A. Pertinent text of the statute

30 U.S.C. § 603 (1964) provides as follows:

> "All moneys received from the disposal of materials under this subchapter shall be disposed of in the same manner as moneys received from the sale of public lands, except that moneys received from the disposal of materials by the Secretary of Agriculture shall be disposed of in the same manner as other moneys received by the Department of Agriculture from the administration of the lands from which the disposal of materials is made, and except that revenues from the lands described in sections 1181a-1181j of Title 43, shall be disposed of in accordance with said sections and except that moneys received from the disposal of materials from school section lands in Alaska, reserved under section 353 of Title 48, shall be set apart as a separate and permanent fund in the Territorial Treasury, as provided for income derived from said school section lands pursuant to sections 353 and 354 of Title 48."

B. Congressional rationale for payments

A review of the legislative histories of the temporary 1944 legislation and the permanent 1947 legislation reveals no clear statement of the rationale for either the payment itself or the type of payments made. It appears likely, however, that Congress, in providing for an additional source of revenue from the public lands, simply applied the existing revenue sharing arrangements to the new source of revenue.

C. Administration

The statute is administered by the Departments of Agriculture and the Interior through the Bureau of Land Management and the Forest Service. Both Departments have issued regulations concerning the disposal of materials from lands under their jurisdiction.[7] These regulations do not deal with the revenue sharing aspects of these disposals. However, both Departments have internal regulations of an accounting nature relating to the distribution of the proceeds realized on the sales of materials.[8] The material herein is based on an examination of these manuals and on interviews with responsible BLM and Forest Service personnel.

---

[7] 36 C.F.R. §§ 251.4 *et seq.* (1967) (Agriculture); 43 C.F.R. §§ 3611 *et seq.*, §§ 5400 *et seq.* (1967) (Interior).

[8] Part 1373 BLM Manual (1967); Title 6500 FSM (1967).

D. Lands for which payments are made

The statute provides for the sharing of revenues realized from the disposal of materials on all public lands under the jurisdiction of the Departments of Agriculture and the Interior except:

1. National Park lands
2. National Monuments
3. Indian lands
4. Land held in trust for the Indians[9]

E. Recipients of payments and restrictions on their use

Proceeds realized from the disposal of materials from public lands of the United States are disposed of in the following manner:

1. Proceeds realized from the disposal of materials on public lands under the jurisdiction of the Secretary of the Interior are distributed in the same manner as the proceeds realized from the sale of public domain lands, i.e., five per cent of the net proceeds are returned to the States in which the land containing the disposed materials is situated. The moneys so returned are subject to the same restrictions as are proceeds realized from the sale of public lands in the State, i.e., they must, generally speaking, be used for public schools and roads. (See Digest LA.)

2. Proceeds realized from the disposal of materials on O&C lands are disposed of in the same manner as other revenue produced from those lands. The revenue is returned to the county governments for use without restrictions.

3. Proceeds realized from the disposal of materials on Reconveyed Coos Bay Wagon Road lands are returned to the county governments in the same manner as other revenue realized from this land, i.e., in the form of a payment in lieu of taxes which must be used for schools, roads and port districts. (See Digest LE.)

---

[9] 30 U.S.C. §§ 601 (1964). The statute does not define the term "public lands". According to representatives of the Bureau of Land Management no materials are in fact disposed of from acquired lands. Interview with Mr. Donald Bailey, Chief Field Examinations and Investigations Section, BLM, March 27, 1968. The Forest Service, however, disposes of material located on acquired land. Interview with V. R. Carrell, Special Staff Assistant, Forest Service, March 27, 1968.

4. Proceeds realized from the disposal of materials on Alaska school section lands are paid into a special fund in the State treasury,[10] for use in connection with schools for agriculture and mining.

5. Proceeds realized from the disposal of materials on public lands under the jurisdiction of the Secretary of Agriculture are disposed of in the same manner, and are subject to the same restrictions as other revenue earned from the administration of lands from which the disposal of materials was made. (See Digests LB National Forests, and LM Bankhead-Jones lands.)

F. Calculation of payments

All materials are disposed of at a price which is not less than their appraised value. The appraisal techniques applied by both Departments are substantially the same. Two methods of appraisal are employed:

(a) Comparative pricing based on prior sales of similar materials;

(b) An end product value analysis involving the calculation of the end product value of the material involved and subtracting therefrom the costs of collection (including risk and profit factors) of the purchaser. (See Digests LB & LO for a fuller description of this method.)

It is the policy of both Departments that no disposals will be permitted when the injury to the public land would exceed the benefits to be realized from disposal.

Furthermore, both the Forest Service and the Bureau of Land Management require as a condition of sale that, where appropriate, the purchaser of materials restore the land from which the materials are taken.[11] Such restoration could involve replacement of the top soil, slash removal and filling operations. Where restoration is involved, the cost of such restoration is taken into account in calculating the in-place value of the materials sold. Insofar as Forest Service sales are concerned, deposits for reforestation are required under the Knutson-Vandenberg Act where applicable.[12]

---

[10] 48 U.S.C. § 354a (1964).

[11] 43 C.F.R. §§ 3610.1b (1967); 43 C.F.R. §§ 5400.0-3 (1967); Title 2822.1 FSM (1958).

[12] 16 U.S.C. § 576b (1964).

Because the costs of restoration and rehabilitation may be greater on public lands than they would be on similarly situated private lands, the price received for disposable materials may be somewhat less than the market price.

All materials are disposed of either by competitive bidding or negotiated sale. The regulations issued by both Departments provide for similar treatment of the same types and amounts of materials.[13] The major factors considered are:

1. value;
2. availability of competition;
3. amount of the purchase;
4. type of purchaser
    (a) public
    (b) private;
5. use of materials.

In cases where there is a negotiated sale, the terms of the contract will be decided on, a deposit given, and the sale will be concluded.

In cases involving competitive bidding, the public is given notice by both advertisement in the area of the sale, and posting at the place of sale. The notice will contain all relevant information required by the potential bidder, including:

1. type of material;
2. amount to be offered;
3. special requirements;
4. terms of the sale;
5. type of bidding called for
    (a) sealed
    (b) oral;
6. place and date.

Once a bid is accepted, the purchaser will post a deposit and the contract will be entered into.

All money received from the disposal of materials goes into special accounts for subsequent distribution in the following manner:

1. Department of the Interior

    (a) Proceeds from Coos Bay Wagon Road lands are distributed to the counties as a payment in lieu of taxes.

---

[13] 36 C.F.R. §§ 251.4 et seq. (1967) (Agriculture); 43 C.F.R. §§ 3611 et seq. (1967) (Interior), 43 C.F.R. §§ 5400 et seq. (1962) (Interior).

(b) Proceeds from O&C lands are shared with the counties in the same manner as other proceeds from O&C lands. Fifty per cent of the gross receipts are returned to the counties.

(c) Proceeds from the Alaska school section lands are all paid into a special fund in the State treasury to be used for educational purposes as provided in 48 U.S.C. §354 (1964).

(d) Proceeds from other public lands are shared with the States in the same manner as proceeds from the sale of public lands. Four per cent of the gross receipts are returned to the States from which the revenues are derived.[14] (See Digest LA).

2. Department of Agriculture

Section 603 provides that revenue proceeds from the disposal of materials on lands under the jurisdiction of the Department of Agriculture are to be disposed of in the same manner as other revenue produced from the same lands. (See Digests LB and LM.)

14/ Part 1373 BLM Manual.

FEDERAL STATUTE DIGEST NO. LR

Act of August 7, 1947 (Mineral Leasing on
Acquired Lands), 61 Stat. 913, 915 (1947),
30 U.S.C. § 351 (1964)

I. Background

During the 1920's questions were raised concerning the applicability of the Mineral Leasing Act of 1920[1] to acquired lands. The Department of the Interior had granted several leases on certain Indian reservation lands[2] and the United States Attorney General was asked to rule on the validity of those leases.[3] The issue centered on the meaning of the following language:

> " ...lands containing such deposits owned by the United States, including those in national forests..."[4]

The Attorney General concluded that there was no Congressional authority to lease mineral rights on the Indian lands in question. This opinion was affirmed in 1941[5] when the Attorney General ruled that the Mineral Leasing Act of 1920 "had peculiar application to the public domain."[6]

However, there were other Congressional grants of authority to lease mineral rights on certain lands acquired by the United States. In 1917 the Secretary of Agriculture was given authority to grant certain mineral leases on lands acquired under the Weeks Act,[7] and during the years prior to 1947, several additional statutes were enacted which allowed mineral leasing on certain other acquired lands.[8]

In 1946 the functions of the Secretary of Agriculture relating to certain mineral deposits in certain lands, were transferred to the Secretary of the Interior.[9] The mineral development of these lands was to be undertaken only after the Secretary of Agriculture certified that the development would not interfere with the primary purpose for which the lands were acquired.[10]

---

[1] 30 U.S.C. § 181 (1964).
[2] 34 Ops. Atty. Gen. 171 (1924).
[3] *Ibid.*
[4] 30 U.S.C. § 181 (1964).
[5] 40 Ops. Atty. Gen. 9 (1941).
[6] *Id.* at 13.
[7] 39 Stat. 1134, 1150 (1917), 16 U.S.C. § 520 (1964).
[8] 44 Stat. 1347, 1348 (1927), 50 Stat. 522, 525, 530 (1937).
[9] 60 Stat. 1095, 1099 (1946).
[10] *Ibid.*

The Mineral Leasing Act for Acquired Lands [11] was enacted to promote and encourage the development of the ore, gas and other minerals on the acquired lands of the United States on a uniform basis under the jurisdiction of the Department of the Interior.[12] It extended the mineral leasing laws applicable to public domain to all acquired lands, with certain exceptions.[13] The Act provides that all receipts from mineral leases on acquired lands are to be disposed of in the same manner as prescribed for other receipts from the same lands.[14]

II. Provision for Payments and its Administration

A. Pertinent text of the statute

30 U.S.C. § 355 (1964) provides in part as follows:

> "All receipts derived from leases issued under the authority of this chapter shall be paid into the same funds or accounts in the Treasury, and shall be distributed in the same manner as prescribed for other receipts from the lands affected by the lease, the intention of this provision being that this chapter shall not affect the distribution of receipts pursuant to the legislation applicable to such lands. Provided, however, that receipts from leases or permits from minerals in lands set apart for Indian use, including lands the jurisdiction of which has been transferred to the Department of the Interior by the Executive Order for Indian use, shall be deposited in a special fund in the Treasury until final disposition thereof by the Congress."

B. Congressional rationale for payments

There were no printed hearings held on the statute, and the Congressional reports give no indication as to why this particular revenue sharing provision was adopted. However, Reorganization Plan No. 3[15] adopted the same basic provision for disposition of receipts as was later enacted. The plan was limited in coverage to already acquired lands, while the statute was intended to cover all future acquisitions.

C. Administration

The responsibility for administering mineral leases on the public lands (including acquired lands) is lodged with the

---

[11] 30 U.S.C. § 351 et seq. (1964)
[12] H. R. Rep. No. 550 80th Cong., 1st. Sess. 2 (1947).
[13] *Ibid*.
[14] 30 U.S.C. § 355 (1964).
[15] 60 Stat. 1095, 1099 (1946).

Bureau of Land Management regardless of which federal department or agency has overall jurisdiction of the lands to which the leases relate. With all mineral leases the permission of the agency or department administering the lands is required. Furthermore, the lessee is subject to any requirements the administering agency may impose concerning the use of the lands, as well as any requirements the BLM may impose.

D. Lands for which payments are made

Payments are made with respect to mineral bearing lands acquired by the Federal Government which are not covered by the Mineral Leasing Act of 1920. Like the Mineral Leasing Act of 1920, this legislation applies only to certain minerals. The statute does not apply to lands acquired for National Parks and Monuments. As of June 30, 1966, some five million acres of acquired lands were subject to mineral leases. 16/

E. Recipients of payments and restrictions on their use

Moneys received from rents, royalties and bonuses from mineral leases on acquired lands are shared in the same fashion as other revenues realized from the lands to which the leases relate, and are subject to the same restrictions as to their use. For example, moneys received from mineral leases on acquired National Forest lands are shared in the same fashion as are other revenues derived from such lands. BLM collects the rents, royalties, etc., and deposits them in the appropriate Treasury account. For example, in the case of moneys received from leases on acquired National Forest lands, the moneys collected by BLM are placed in the National Forest Fund account. These moneys are mixed with other National Forest revenues. and are ultimately distributed by the Forest Service. 17/ (See Digest LB.)

F. Calculation of Payments

Moneys collected from mineral leases on acquired lands are calculated in the same fashion as all mineral leases. For a description of BLM's rules and regulations pertaining to the calculation of mineral lease payments see subsection II F of Digest LF.

G. Problem areas or matters suggested for consideration by the Commission

The Mineral Leasing Act For Acquired Lands is an example of a statute which, in providing for revenue sharing, does not create any new formulas or administrative machinery. This is

---

16/ Public Land Statistics 1966, p. 85.
17/ Tit. 2865.26 FSM (1959).

in contrast to the Mineral Leasing Act of 1920 which provided for a separate formula for disposing of mineral leasing revenue earned from the public domain lands. The Commission should consider the application of a single revenue sharing provision formula with respect to all revenues received from the same land wherever possible. The application and operation of the Mineral Leasing Act for Acquired Lands should furnish valuable background material to study the feasibility of this type of revenue sharing approach.

FEDERAL STATUTE DIGEST NO. LS

Act of June 22, 1948 (Payment of 3/4 of 1% of the appraised value of the land to counties in which the Boundary Waters Canoe Area is located in Superior National Forest) 62 Stat. 568, 570, as amended, (1948), 16 U.S.C. § 577g, g-1 (1964).

I. Background

The Superior National Forest (the "Forest") was created by Presidential Proclamation No. 848 on February 13, 1909. As with other National Forests, twenty-five per cent of the forest revenues was distributed to the states for the benefit of counties in which the forest was located to be used for public schools and roads.[1]

In 1930, the Shipstead-Nolan Act,[2] withdrew a large portion of the forest along the Canadian border "from all forms of entry or appropriation under the public land laws of the United States." Logging, the major source of revenue, was forbidden within 400 feet of the shoreline of lakes and streams.[3] Most of this area withdrawn from "entry or appropriation" is located in the Boundary Waters Canoe Area (the "BWCA"). The BWCA itself consists of approximately 1,000,000 acres of which approximately 750,000 acres are administered by the Forest Service. An additional 100,000 acres are controlled by the State of Minnesota and approximately 25,000 acres by the three counties having land within the area. There are also BWCA lands in Canada, in addition to a few private holdings which are in the process of being condemned.[4]

In 1948, Congress provided money for acquisitions to enlarge the BWCA.[5] This legislation also authorized payments in lieu of taxes to Minnesota of three fourths of one percent of the "fair appraised value" of the Federal lands located in the BWCA. The statute provides for an appraisal to be made every ten years by the Secretary of Agriculture whose determination is "conclusive and final." The State must pay the money to the counties in which the BWCA is located, but the statute does not restrict the uses to which the counties may put the money.

The area of the BWCA was enlarged again in 1956 with the same in lieu provision. The first in lieu payments on these newly acquired lands were made at the end of the 1959 fiscal year,[6] while authority to condemn private holdings within the BWCA was given in 1961.[7]

1/ 35 Stat. 251 (1908). See Digest LB.
2/ 46 Stat. 1020 (1930).
3/ Letter from V.R. Carrell, Special Staff Assistant, U.S. Forest Service, dated 8/14/67 in EBSMCI PLLRC file #202. See generally, 36 C.F.R. § 251.85 (1967) for the restrictions applicable to BWCA lands.
4/ Interview with Paul Swarthout, Assistant to the Director of Lands, U. S. Forest Service, February 8, 1968.
5/ 62 Stat. 570 (1948).
6/ 16 U.S.C. § 577, g-1 (1964).
7/ 75 Stat. 772 (1961).

II. Provision for Payments and its Administration

A. Pertinent text of the statute

16 U S.C. § 577g (1964) provides in part as follows:

> "The Secretary of the Treasury, upon the certification of the Secretary of Agriculture, shall pay to the State of Minnesota at the close of each fiscal year from any national-forest receipts not otherwise appropriated a sum of money equivalent to three-quarters of 1 per centum of the fair appraised value of such national-forest lands as may be situated within the area described in section 577d of this title at the end of each fiscal year; and the payments made hereunder shall be distributed to each of the three aforesaid counties in conformity with the fair appraised value of such national-forest lands in each county: Provided, That the fair appraised value of the lands shall be determined by the Secretary of Agriculture at ten-year intervals and his determination shall be conclusive and final: ...And provided further, That the provisions of Section 500 of this title shall not be applicable to the national-forest lands to which this section applies."

16 U.S.C. § 577g-1 (1964) is identical except that it applies to BWCA lands acquired in 1956 and thereafter.

B. Congressional rationale for payments

The legislative history of this provision indicates that the reason Congress adopted the payment in lieu of tax approach to the BWCA instead of the usual twenty-five per cent revenue sharing provision applicable to National Forest lands was because the BWCA lands were not expected to produce any revenues. This is clear from the following excerpts from a letter of the Department of Agriculture contained in the Senate report dealing with this legislation:

> "Section 5 provides that, in addition to the 25 percent of national-forest receipts annually distributed as an 'in lieu of tax' payment to the counties concerned, the Federal Government will pay annually to the counties 12 cents per acre for all national-forest land in such counties that lie within the designated special-acquisition area. One purpose of this additional payment is to compensate the counties for the lack of timber-sale receipts from the no-cut national-forest area within their boundaries and for the lack of taxable improvements due to the elimination of much, if not all, of the privately owned land within the special-acquisition portion of their national-forest area.
>
> "This Department objects to this section of the bill for the two major reasons briefed below:

"1. The proposal would contribute toward a piecemeal settlement of the Nation-wide national forest 'in lieu of tax' problem. Congress already has under consideration several bills dealing with this problem on a Nation-wide basis. Its solution, when determined, should be applied to all national-forest land. The proper solution should not be impeded or complicated by a piecemeal legislative action of this nature.

"2. The proposed rate of 12 cents per acre per year as an additional 'in lieu of tax' payment appears excessive. There apparently is no justification or basis for the suggested rate.

"This Department appreciates that the present 'in lieu of tax' procedure and payments for national-forest land provides fluctuating payments which for certain periods may be inadequate in helping to meet county obligations and expenditures. In addition, as previously mentioned, the cutting of Government stumpage on about half of the specified acquisition area has been stopped, and this bill proposes that private land will be largely eliminated from the area. Both of these actions will decrease sharply the 25 percent of receipts payments to the counties from this acquisition area. Several bills have been introduced into the present session of Congress proposing new procedures and payments relative to 'in lieu of tax' contributions for national-forest land. A report by this Department to the House Committee on Public Lands on H.R. 581 recommended an 'in lieu of tax' annual payment of 0.75 of 1 percent of the fair value of the national-forest land as appraised by the Secretary of Agriculture. This would replace the present payment of 25 percent of the receipts of the nations forest concerned. This Department would not object to the application of such 'in lieu of tax' procedure and rate of payment relative to the national-forest land in the designated acquisition area to replace the present 25 percent of receipts payment authorized by section 500 of title 16 of the United States Code. "[8]

The following extracts from the House report on the legislation are to the same effect:

"Pursuant to this act, the Forest Service set aside a tract of approximately 1,000,000 acres of this region as a 'roadless area,' one in which there should be no permanent roads. It also designated about 35 percent of the roadless area as a 'no cut' area, in which there are no commercial timber sales on national-forest land. All of the area involved is within the Superior National Forest."[9]

---

[8] S. Rep. No. 968, 80th Cong., 2d Sess. 4 (1948) (Quoting Letter from Department of Agriculture).

[9] H.R. Rep. No. 2186, 80th Cong., 2d Sess. 2 (1948).

"PAYMENTS IN LIEU OF TAXES"

"Normal procedure is for the Forest Service to pay to counties in which Forest Service lands are located 25 percent of the receipts from logging on such lands 'in lieu of taxes.' Inasmuch as commercial logging is prohibited in much of the area involved in this bill, the committee believes that a more equitable formula in this case is one based on the appraised value of the lands, rather than on timber sales. The committee amendment (sec. 5 of the bill) establishes this payment at three-quarters of 1 percent of the appraised value of the land. A detailed consideration of this formula is set out in the letter from the Department of Agriculture, which follows."[10]

In the same House report the Department of Agriculture commented on the revenue sharing formula as follows:

"Section 5 provides that the counties will receive an annual payment of 1 percent of the fair appraised value-- with a reappraisal of such value at 10-year intervals -- of the national-forest land each of the three counties has within the 'acquisition area' specified in section 2. These payments will take the place of that portion of the 25 percent of national-forest receipts annually distributed under present law to these counties on the basis of the same national-forest acreage. One reason for determining, on an appraised-value rather than a receipts basis, the portion of the annual payment to each county which is based on its national-forest land within the specified 'acquisition area', is to compensate the counties for the lack of timber sale receipts from the no-cut national-forest area within their boundaries and for the lack of taxable improvements due to the elimination of much, if not all, of the privately owned land within the special acquisition portion of their national-forest area.

"As indicated previously, there appears to be special justification for basing the Federal 'in lieu of tax' annual contributions to the counties for the national-forest land within the specified 'acquisition area' on a percentage of the appraised value of such land. An annual contribution composed of 1 percent of the appraised value of such national-forest land, however, appears unreasonably high for the following major reasons:

> "Data compiled by the Bureau of Agricultural Economics of this Department indicate that the average tax rate on farm real-estate values in the United States for the last 3 years (1944 through 1946) was nine-tenths of 1 percent. This is the best criterion available as to the average ratio of taxation to real value of wild land.

---

[10] Id. at 3.

> "2. The Federal Government finances some of the costs on national-forest land, such as fire protection and road and trail construction and maintenance, which would be borne in part at least by the county if these lands were in private ownership.
>
> "3. Some services supplied and financed in part at least by counties, such as school facilities and law enforcement, are generally lighter on national-forest land than on comparable privately owned land.
>
> "The above facts indicate that annual financial contributions on account of national-forest land should be based on a lower rather than a higher percentage of the appraised value of the land than the rate or percentage used in the case of privately owned farm real estate. They indicate that three-fourths of 1 percent of the appraised value of the national-forest land would form a more equitable basis than 1 percent in determining the amount of the annual 'in lieu of tax' contribution or payment. This Department, in previous reports on bills before Congress, has indicated its belief that it would be desirable and justifiable to substitute an annual Federal contribution based on three-fourths of 1 percent of the appraised value of the national-forest land as determined by the Secretary of Agriculture for the present annual contribution based on 25 percent of the receipts of the national forest concerned as authorized by section 500 of title 16 of the United States Code."[11]

C. Administration

The BWCA is administered by the Forest Service of the Department of Agriculture. Regulations concerning the restrictions on all of the BWCA have been issued by the Secretary of Agriculture, but such regulations do not cover the in lieu of tax provision. Consequently, the information contained herein has been derived from personal or telephone interviews and correspondence with responsible Forest Service personnel.

D. Lands for which payments are made

The statute directs that payments be made with respect to Federal lands located within the BWCA of Superior National Forest in Minnesota.

---

[11] *Id.* at 6 (excerpt from Department of Agriculture letter).

E. Recipients of payments and restrictions on their use

The statute directs that, at the close of the fiscal year, a sum of money equivalent to three-quarters of one per cent of the fair appraised value of National Forest lands situated in the BWCA be paid to the State of Minnesota to be distributed to Cook, Lake and St. Louis Counties in conformity with the fair appraised value of such BWCA lands in each county. The statute provides no restrictions on the use of the money received by the three counties and the payments are made to Minnesota as soon as practicable after the close of the fiscal year. The Forest Service accompanies its payments to Minnesota with material identifying the program under which the payment is made and showing the amounts allocable to each county on the basis of the appraised value of BWCA lands in each county. The fact of the payments is publicized from press releases. The Forest Service does not, however, make any check as to how Minnesota distributes the payments to the three counties, it being of the opinion that such is not its responsibility.12/

F. Calculation of payments

The statute provides that three-quarters of one per cent of the fair appraised value of BWCA lands be annually paid to Minnesota for further distribution to the three counties involved. Appraisals are required every ten years and the Secretary of Agriculture's determination is final and conclusive. The actual appraisal is carried on by the Forest Service using current market value as a basis.

The Forest Service has promulgated extensive guidelines on the appraisal of land in general which are applied to the BWCA lands.13/ Discussions with the Forest Service indicate that where land is acquired from private owners with improvements which are not removed by the Forest Service prior to appraisal, the improvements are valued at cost for the ten-year period within which the property was acquired but not thereafter. Where possible, improvements such as buildings are removed in keeping with the policy of maintaining or returning the BWCA lands to a wilderness or primitive state. Recreational values are computed on the basis of comparable property values without the BWCA taking into consideration beach conditions, and water frontage. Since roads may not be built into the BWCA, the values are computed on the lands' worth as if they were in private ownership and accessible by road. Sale prices of comparable property without the BWCA are also considered, while timber valuation is carried out under standard Forest Service procedures.14/

12/ Telephone interview with Glenn C Todd, Director Budget and Finance, Forest Service, March 21, 1968.

13/ FSM tits. 5412-13 (1958). The Forest Service also employs standard texts on the subject of real estate evaluation, specifically *The Appraisal of Real Estate*, American Institute of Real Estate Appraisers (4th ed. 1961, Chicago). Swarthout interview *supra* note 4.

14/ Swarthout interview, *supra* note 4.

G. Problem areas or matters suggested for consideration by the Commission

The appraisal techniques employed by the Forest Service with respect to the BWCA lands differ somewhat from those employed by other Federal agencies in calculating the in lieu of tax payments to be made under other statutes. For example the appraisal techniques employed by the Department of the Interior with respect to Migratory Bird Conservation lands and the reconveyed Coos Bay Wagon Road lands differ from each other and from the approach adopted with respect to the BWCA lands. In some respects the differences are attributable to differences in the statutes themselves. Consideration should nevertheless be given as to whether a single land valuation technique can be adopted with respect to all payments in lieu of tax provisions. If nothing else, this would ensure a greater degree of uniformity than is presently the case.

Furthermore, as pointed out by the Department of Agriculture when the legislation was enacted, these payments represent an exception to the normal revenue sharing provisions applicable to National Forest lands. The Department objected to the piecemeal approach to payments in lieu of taxes evidenced by this legislation,and the Commission should consider the whole question of the piecemeal approach to revenue sharing and payments in lieu of tax statutes in general.

FEDERAL STATUTE DIGEST NO. LT

Act of September 5, 1950 (Surplus Property under the General Services Administration) 64 Stat. 578, 580 (1950), 40 U.S.C. § 490 (1964)

I. Background

The General Services Administration (G.S.A.) was created by the Federal Property and Administrative Services Act of 1949.[1] Among the duties assigned to the G.S.A. is the administration of property which has been declared surplus under the Surplus Property Act of 1944.[2]

In 1950 Congress amended the Federal Property and Administrative Services Act of 1949 in order to "round out" the existing authority of the G.S.A. The Administrator of G.S.A. was given the authority to make payments in lieu of taxes on surplus real property, where legal title to such property remained in any such Government corporation.[3] The committee report indicates that Congress was following the preexisting practices of allowing real property of Government corporations to be subject to taxation.[4] The committee reports also state that Congress had previously, in appropriation bills, authorized the War Assets Administration to make substantially similar payments on surplus property. The War Assets Administration managed the surplus property prior to the creation of the G.S.A.[5]

The authority granted by the Act applies only to property declared surplus before June 30, 1949, since the Surplus Property Act was repealed as of that date.[6]

According to G.S.A. no payments have ever been made under this legislation.[7] However, in lieu of tax payments are made by G.S.A. with respect to property of the Reconstruction Finance Corporation which has been transferred to other Government agencies (See Digest LZ).

---

[1] 63 Stat. 377 (1949).

[2] 58 Stat. 765 (1944).

[3] 64 Stat. 578, 580 (1950).

[4] H. R. Rep. No. 2747, 81st Cong., 2d Sess. 9 (1950).

[5] Ibid.

[6] 63 Stat. 377, 399 (1949).

[7] Telephone interview on August 1, 1967 with E. Minton Holland, Chief Counsel, Real Property (Disposal Division), Office of the General Counsel, G.S.A.

II. Provision for Payments and its Administration

A. Pertinent text of statute 40 U.S.C. § 490 (a)(9)(1964) provides as follows:

> "Whenever and to the extent that the Administrator has been or hereafter may be authorized by any provision of law other than this subsection to maintain, operate, and protect any building, including the construction, repair, preservation, demolition, furnishing, and equipment thereof, he is authorized in the discharge of the duties so conferred upon him ...
>
> (9) to pay sums in lieu of taxes on real property, declared surplus by Government corporations, pursuant to the Surplus Property Act of 1944, where legal title to such property remains in any such Government corporation; ..."

B. Congressional rationale for payments

The Congressional rationale for the payments to be made under this legislation is succinctly set forth in the extract from the House Committee Report set forth below:

> "Subsection 9 authorizes the payment of sums in lieu of taxes on real property declared surplus by Government corporations pursuant to the Surplus Property Act of 1944, where legal title to such property remains in any such Government corporation. As in the case of many of the preceding subsections, substantially similar authority exists in appropriation acts relating to the former War Assets Administration, the functions of which are now vested in the General Services Administration. When real property owned by a Government corporation, such as RFC, is declared surplus legal title remains in the corporation unless it is conveyed to the United States or sold to outside interests. It has been the practice in the past for Government corporations to pay sums in lieu of taxes on real property, title to which rests in them as distinguished from the United States. It is believed advisable to continue this authority insofar as the inventory of property declared surplus under the provisions of the Surplus Property Act of 1944 is concerned at least until such time as title to the property vests in the United States. It should be pointed out that this authority applies only to real property declared surplus under the Surplus Property Act of 1944 which, with certain inapplicable provisions, was repealed effective as of June 30, 1949. This means that the authority would not extend to any properties declared excess or surplus on or after July 1, 1949."8/

8/ H.R. Rep. No. 2747, 81st Cong., 1st. Sess. 9 (1950).

C. Administration

This legislation is administered by the G.S.A. However, according to that agency no payments have ever been made under it[9/] and there are no regulations or other materials dealing with the statute. Consequently, the information contained herein is based on telephone interviews with responsible G.S.A. personnel.

D. Property for which payments are made

The statute provides for in lieu of tax payments to be made on real property declared surplus by Government corporations pursuant to the Surplus Property Act of 1944 where legal title to such property remains with the corporation.

E. Recipients of payments and restrictions on their use

The statute does not specify the governmental unit to receive payments and it provides for no restrictions as to the use of such payments. No date on payments is given for the payments.

F. Calculation of payments

None ever made.

G. Problem areas

The statute is extremely broad in scope. As such, if payments had been made pursuant to its terms, G.S.A. would have had to exercise great administrative discretion as to the amount, timing and recipient of the payments. The Commission should consider the advisability of granting such wide discretion to administrative agencies. This is an example of a statute which provides almost no guidelines for administering the statute.

[9/] See Holland interview, supra note 7.

FEDERAL STATUTE DIGEST NO. LU

Act of September 14, 1950 (Grand Teton National Park), 64 Stat. 849, 851 (1950, 16 U.S.C. § 406d-3 (1964).

I. Background

In the late 1920's, John D. Rockefeller, Jr. purchased 33,000 acres of privately owned range property in Teton County, Wyoming, intending to donate the land to the Federal Government for park purposes. Teton County objected because the proposed conveyance of the lands would have substantially reduced the county tax revenues, and the United States Government already owned ninety-five per cent of the land in the county. As a result, the county tax rate was already twice the Wyoming average county rate and removal of the Rockefeller lands from the tax rolls would have increased the burden on Teton County and its taxpayers still further.1/

For a number of reasons efforts during the 1930's to include the Rockefeller lands within the boundaries of a National Park were unsuccessful. However, in 1943, President Roosevelt, by Presidential Proclamation, created Jackson Hole National Monument in Teton County.2/

Mr. Rockefeller conveyed the 33,000 acres of land to the Federal Government to be included in the National Monument in December 1949, and by the next year Congress created Grand Teton National Park (the "Park") which included the lands previously contained in the Jackson Hole National Monument. This legislation also provided for payments in lieu of taxes3/ to Teton County.

The Park Service has been acquiring small tracts of land and adding them to the Park for a number of years and these are included in this program.

This is the only park or recreation program administered by the Park Service which contains a revenue sharing or payment in lieu of tax provision.4/

1/ S. Rep. No. 1938, 81st Cong., 2d Sess. 3 (1950).

2/ Pres. Proc. 2578, 8 F.R. 3277 (1943).

3/ 16 U.S.C. § 406d-3 (1964).

4/ Telephone interview with Mr. Charles E. Watson, Assistant Chief, Division of Budget, National Capital Regional Office, United States Park Service on April 11, 1968. However, S. 1370, 90th Cong., 1st Sess. (1967), establishing the Redwood National Park, contains a discretionary in lieu of tax provision.

II. Provision for Payments and its Administration

A. Pertinent text of the statute

16 U.S.C. § 406d-3 (1964) provides as follows:

> "(a) In order to provide compensation for tax losses sustained as a result of any acquisition by the United States, subsequent to March 15, 1943, of privately owned lands, together with any improvements thereon, located within the exterior boundary of the Grand Teton National Park established by sections 406d-1 and 406d-4 of this title, payments shall be made to the State of Wyoming for distribution to the county in which such lands are located in accordance with the following schedule of payments: For the fiscal year in which the land has been or may be acquired and nine years thereafter there shall be paid an amount equal to the full amount of annual taxes last assessed and levied on the land, together with any improvements thereon, by public taxing units in such county, less any amount, to be determined by the Secretary of the Interior, which may have been paid on account of taxes for any period falling within such fiscal year. For each succeeding fiscal year, until twenty years elapse, there shall be paid on account of such land an amount equal to the full amount of taxes referred to in the preceding sentence, less 5 per centum of such full amount for each fiscal year, including the year for which the payment is to be made: Provided, that the amount payable under the foregoing schedule for any fiscal year preceding the first full fiscal year following the approval of this Act shall not become payable until the end of such first full fiscal year.
>
> "(b) As soon as practicable after the end of each fiscal year, the amount then due for such fiscal year shall be computed and certified by the Secretary of the Interior, and shall be paid by the Secretary of the Treasury: Provided, that such amount shall not exceed 25 per centum of the fees collected during such fiscal year from visitors to the Grand Teton National Park established by sections 406d-1 and 406d-4 of this title, and the Yellowstone National Park. Payments made to the State of Wyoming under this section shall be distributed to the county where the lands acquired from private landowners are located and in such manner as the State of Wyoming may prescribe."

B. Congressional rationale for payments

The tax rate in Teton County, Wyoming, was almost twice the average of all other Wyoming counties because ninety-five per cent of the land there was tax exempt, Federally owned property. As a result, the county was hard pressed to provide adequate funds for school and county purposes. There were four proposals as to what formula should be used in calculating the payments in lieu of taxes. The Senate Committee on Interior and Insular Affairs explained one of these as follows:

> "As originally introduced the bill provided a payment in lieu of taxes in perpetuity. This has been changed in the amended bill after prolonged conferences so that it now provides for the payment to the county during the first 5 years after the acquisition of the Rockefeller lands of the full amount last derived by taxation on such lands and for the payment for 20 years of a sum which will be diminished by 5 per cent annually from the original sum which was approximately $25,000.
>
> "The taxable area within Teton County being, as already pointed out, only 4½ per cent of the entire area within its boundaries, the county finds it difficult to raise funds for county and school purposes. The fiscal situation by reason of Federal ownership of lands within the county is so difficult that Teton County is obliged to levy taxes at almost double the average rate for all Wyoming counties." 5/

The Secretary of the Interior suggested these changes:

> "We find it necessary to suggest that section 5 of the bill be revised. This section would provide for annual payments by the Federal Government amounting to the full amount of the assessed taxes on lands acquired for the park area subsequent to March 15, 1943, the date that the Jackson Hole National Monument was established. By the terms of the bill, these payments would continue so long as title to such acquired lands remains in the United States. This provision has been carefully considered by this Department and the Bureau of the Budget. As a result, we recommend that this section of the bill be amended as hereafter suggested. If so amended, adequate provision would be made for alleviating tax losses that may result from Federal acquisition of lands subsequent to March 15, 1943, which lands are by this bill included within the park. Such payments would also be based on the taxes last assessed on the lands but would be made annually over a 20-year period, decreasing each year by 5 per cent. The effect of this provision would be to provide a method of decreasing gradually the Federal expense in making such payments while, at the same time, allowing payments in amounts and for a time sufficient to permit

---

5/ S. Rep. No. 1938, 81st Cong. 2d Sess. 3 (1950).

the local government to adjust itself to the loss of taxes. Considering the substantial local economic benefits from the establishment of the national park, this formula of payments to the local government would seem to be equitable." [6]

The Report of the House Committee of Public Lands, whose version was ultimately enacted, contained the following material:

> "As passed by the Senate, S. 3409 provided for payment to the county during the first 5 years after the acquisition of the Rockefeller lands of the full amount last derived by taxation on such lands and for the payment for 20 years of a sum which would be diminished by 5 per cent annually from the original sum of approximately $25,000. The Committee on Public Lands has amended the bill to provide for full reimbursement for the first year and 9 years thereafter, inasmuch as land acquisitions in the area will eventually reduce the taxable property to approximately 3 per cent of the area. For that reason the committee feels that the county should be further helped toward recovery of tax losses." [7]

Congress also felt that the payments should only be made out of revenues generated by the new park. The Senate Committee on Interior and Insular Affairs reflected this attitude when it stated:

> "Sec. 5 provides reimbursement to Teton County of the amount of taxes paid upon the private property which is being included in the extended park. This payment in lieu of taxes will be the full amount of the tax previously collected upon the lands for the 5 years following their accession and an amount decreasing each year by 5 per cent for the 20 years thereafter. It is provided, however, that the amount payable shall not exceed 25 per cent of the fees collected from park visitors each fiscal year. Thus the payment comes only from the receipts which are anticipated by reason of the creation of the new park."[8]

The legislative history gives no clues as to why the twenty-five per cent figure was selected nor is there any further discussion of rationale other than that cited above in any of the committee reports or debates. No hearings were printed on this legislation.

C. Administration

The Secretary of the Interior has statutory authority to administer the Grand Teton National Park.[9] Administration of all national parks is the responsibility of the National Park Service.[10] There are no regulations dealing with the administration of the payment in lieu of tax provision. Consequently, the information contained herein has been acquired from personal or telephone interviews with representatives of the Park Service.

---

[6] Id. at 5, 6 (letter from Oscar Chapman, Secretary of the Interior).

[7] H.R. Rep. No. 2910, 81st Cong. 2d Sess. 4, 5 (1950).

[8] S. Rep. No. 1938, 81 Cong. 2d Sess. 4 (1950).

[9] 16 U.S.C. § 406d-1, 2 (1964).

[10] 16 U.S.C. § 1 (1964).

D. Lands for which payments are made

Privately owned lands acquired by the United States since March 15, 1943, for Grand Teton National Park.

E. Recipients of payments and restrictions on their use

The legislation provides that payments be made to the State of Wyoming for distribution to the county in which such lands are located in accordance with the formula provided. [11] Since Grand Teton National Park is located entirely within Teton County, that county is the only county receiving payments. [12]

F. Calculation of payments

During the first ten years after acquisition, payments are equal to amount of taxes last levied on the land and its improvements less the amount of paid on account of taxes during such year. Thereafter, the payments are decreased by the amount of the original payment every year until after twenty years when the payments are reduced to zero. Payments may only be made out of twenty-five per cent of the fees collected from visitors to the park. [13] The procedure used in calculation of the payments is as follows:

The county tax assessor submits an annual (on a calendar year basis) statement of the county tax rates and assessment valuations to the Superintendent of the Park who forwards the information to the Park Service Regional Finance Office in Omaha, Nebraska. This office takes the information and applies to it the statutory formula. Since the Park Service has been continuously acquiring land for the Park, the Regional Office must calculate the payment due on each tract acquired since March 15, 1943. Once the calculation for each tract has been made and the tract payments for the county totaled, the Regional Office submits a voucher to the Treasury Department's Regional Disbursing Office in Denver, which draws and sends a check to the State of Wyoming accompanied by the county's tax statement. Checks are sent as soon after the close of the fiscal year as possible.

---

[11] 16 U.S.C. § 406d-3 (1964).

[12] Watson interview, *supra* note 4.

[13] 16 U.S.C. § 406d-3 (1964).

Because the county's tax year is on a calendar year basis, and because payments are not made until after the close of the fiscal year with respect to the in lieu of tax payments due for the preceding calendar year, some six months elapse between the time the county presents its tax bill and the time actual payment is made.

According to representatives of the Park Service, receipts from fees from visitors to the Park have always been large enough that the statutory limitation of the amount of the payments has never been reached.

G. Problem areas or matters suggested for consideration by the Commission

This statute is unique in that it provides for a gradual reduction on payments over a thirty-year period. In effect, it adopts a "weaning" approach. This legislative history of this statute indicates that the reason for the declining payment provision was that the loss in tax revenues to Teton County would be more than offset by the economic benefits accruing to the county because of the Park. This assumption may have been correct with respect to this particular situation and may be valid with respect to other lands acquired by the Federal Government. Accordingly, the Commission should investigate the advisability and feasibility of adopting a declining payment approach with respect to all payment in lieu of tax statutes relating to lands acquired by the Federal Government. Consideration should also be given as to whether payment in lieu of tax provisions should be extended and made applicable to some or all other lands administered by the Park Service, *e.g.*, National Parks in general, National Monuments and other recreational areas or lands acquired by the United States. As indicated previously, lands acquired for Grand Teton National Park are the only lands administered by the Park Service with respect to which such payments are currently being made.

14/ The information contained in this Digest was obtained from interviews with Mr. Charles E. Watson, Assistant Chief, Division of Budget, National Capital Regional Office, United States Park Service, on August 4, 1967 and April 11, 1968.

FEDERAL STATUTE DIGEST NO. LV

Act of September 30, 1950 (Public Law 874
- Educational Assistance) 64 Stat. 1100,
1101 (1950) 20 U.S.C. § 237 (1964)

I. Background

Beginning with the years immediately preceding World War II, the Federal Government became involved in a national defense mobilization effort of unprecedented extent. These Federal activities often involved large scale removal of real property from the local tax rolls of many communities, while at the same time there was a sudden and often substantial increase in the populations in those same communities. The result was that many communities found themselves in the position of being unable to provide adequate public education. 1/

Congress in 1941 passed the Lanham Act2/ which, among other things, provided Federal assistance for the construction of school facilities and the maintenance and operation of schools in areas overburdened by increased Federal activities. This act was designed as a wartime measure only. However, Congress continued the assistance program for the maintenance and operation of schools each year up until 1950, when Public Law 81-874 was enacted.

This statute authorized the Commissioner of Education to provide financial assistance for local educational agencies upon which the United States had placed financial burdens by reason of the fact that, among other things, the revenue available to such agencies from local sources had been reduced as the result of the acquisition of real property by the United States.

Since this statute was first enacted it has been continuously renewed and occasionally amended. The latest amendment, Public Law 90-247,3/ removed the requirement that, as a condition to qualifying for Federal financial assistance, the local educational agency is not being substantially compensated for the loss in revenue resulting from such acquisition by other Federal payments with respect to property so acquired.4/

1/ S. Rep. No. 2458, 81st Cong., 2d Sess. 1 (1950).
2/ 54 Stat. 1125, 1126 (1941).
3/ 20 U.S.C. § 273(a) (3) (1964).
4/ Ibid.

II. Provision for Payments and its Administration

A. Pertinent text of statute

20 U.S.C. § 237 (1964) provides in part as follows:

"(a) Where the Commissioner, after consultation with any local educational agency and with the appropriate State educational agency, determines for any fiscal year ending prior to July 1, 1971 -

> "(1) that the United States owns Federal property in the school district of such local educational agency, and that such property (A) has been acquired by the United States since 1938, (B) was not acquired by exchange for other Federal property in the school district which the United States owned before 1939, and (C) had an assessed value (determined as of the time or times when so acquired) aggregating 10 per centum or more of the assessed value of all real property in the school district (similarly determined as of the time or times when such Federal property was so acquired); and
>
> "(2) that such acquisition has placed a substantial and continuing financial burden on such agency; and
>
> "(3) that such agency is not being substantially compensated for the loss in revenue resulting from such acquisition by increases in revenue accruing to the agency from the carrying on of Federal activities with respect to the property so acquired then the local educational agency shall be entitled to receive for such fiscal year such amount as, in the judgment of the Commissioner, is equal to the continuing Federal responsibility for the additional financial burden with respect to current expenditures placed on such agency by such acquisition of property. Such amount shall not exceed the amount which, in the judgment of the Commissioner such agency would have derived in such year, and would have had available for current expenditures, from the property acquired by the United States (such amount to be determined without regard for any improvements or other changes made in or on such property since such acquisition).

"(b) For the purposes of this section any real property with respect to which payments are being made under section 831l of Title 16 shall not be regarded as Federal property "

B. Congressional rationale for payment

A review of the legislative history of the statute shows that it was intended to relieve the financial and educational burden imposed on local communities by Federal programs which resulted in the acquisition of real property, and a sudden increase in the populations of a community.[5]

C. Administration

The statute is administered by the United States Commissioner of Education, who, pursuant to his authority thereunder, has issued regulations governing the administration of the statute.[6]

In actual practice the amount paid out under this statute to compensate for the burden imposed by the removal of land from local tax rolls is not very significant.[7]

D. Lands for which payments are made

With the exception of lands under the Tennessee Valley Authority,[8] the statute provides for payments on Federal property in a school district which (A) was acquired by the United States since 1938, (B) was not acquired by exchange for other Federal property in the school district which the United States owned prior to 1939, and (C) had an assessed value, at the time of acquisition of ten per cent or more of the total assessed value of real property in the school district.[9]

E. Recipients of payments and restrictions on their use

The payments are made to the local educational agency in the school district. There are no restrictions on the use of the payments.

---

[5] S. Rep. No. 2458, 81st Cong., 2d Sess. (1950).

[6] 45 C.F.R. § 115 et. seq. (1967).

[7] For example, in fiscal 1966, the total paid out was $2,427,788.00 which was paid to 99 claimants. Sixteenth Annual Report of the Commissioner of Education, June 30, 1966, on the Administration of Public Laws 874 & 815, p. 14.

[8] 20 U.S.C. § 237 (b) (2) (1964). In the case of lands under the Tennessee Valley Authority the statute provides that "any real property with respect to which payments are being made under section 831l of Title 16 shall not be regarded as Federal Property."

[9] 20 U.S.C. § 237 (a) (1) (1964).

F. Calculation of payment

The statute provides for payment to the local educational agency when the Federal acquisition of real property has placed a substantial and continuing financial burden on such agency, and the agency is not being substantially compensated for the loss in revenue resulting from such acquisition by increases in revenue accruing to the agency from the carrying on of Federal activities with respect to the properties so acquired.

The amount of the payment is that amount which in the judgment of the Commissioner is equal to the burden imposed, but not to exceed the amount that the agency would have had available had the U.S. not acquired the property. In making the determination that the acquisition has placed a substantial and continuing burden on the local education agency, the Commissioner will consider:

(1) The local tax rate

(2) The number of pupils

(3) The average cost per pupil

(4) The per capita cost to the school district

In addition the applicants are required to furnish a narrative statement to support their application. 10/

Applicationsfor financial assistance must be filed by March 31, of the year in which the funds are to be appropriated for payment. 11/ Payments are made by the Treasury upon certification of the amount due at such time as the Commissioner shall designate. The normal practice of the Office of Education, assuming sufficient funds are available, is to make payments on the basis of the current school year. Seventy-five per cent of the amount requested in the local educational authority's application is paid in a lump sum, usually in October or November. The remaining twenty-five per cent is

---

10/ Letter to EBSMC from Department of Health, Education and Welfare, Office of Education, dated February 12, 1968, signed by David H. McEuen, Chief, Maintenance and Operation School Assistance, EBSMC PLLRC File No. 214.

11/ 45 C.F.R. § 115.11 (1967).

paid after the close of the fiscal year, which is also after the close of the school year, when final data concerning the amount to which the local educational agency is entitled becomes available. Payments are made by the Treasury in response to vouchers submitted by the Office of Education. The checks are sent by the Treasury accompanied by statements identifying the payments. Copies of these statements are also sent to the various State educational agencies by the Office of Education. [12]

---

[12] 45 C.F.R. § 115.23 (1967).
Telephone interview with Mr. David H. McEuen, Chief, Maintenance and Operation School Assistance, Office of Education, April 16, 1968.

FEDERAL STATUTE DIGEST NO. LW

Act of August 7, 1953 (Outer Continental Shelf
Lands Act), 67 Stat. 462 (1953) 43 U.S.C.
§§ 1331-43 (1964)

I. Background

The Continental Shelf lands[1] off the coasts of Texas, Louisiana and California were considered worthless until oil was discovered there. With the first hint of the Shelf's potential wealth, both the Federal Government and the States vigorously asserted their claims. California felt her boundaries extended three miles into the Pacific,[2] while the Texas and Louisiana legislatures decided their jurisdiction stretched twenty-seven miles into the Gulf of Mexico.[3] Texas later enlarged its claim to the edge of the Continental Shelf.[4] Having claimed these areas, the States issued mineral leases on them.[5]

In Congress, the Representatives of these States succeeded in pushing through a joint resolution to quitclaim to the coastal States the lands within their "historic boundaries".[6] At the same time, the Attorney General had gone to the courts to settle the question of ownership. President Truman vetoed the resolution on the grounds it was up to the courts to decide the ownership question.[7] In United States v.

---

[1] The Continental Shelf is defined as an extension of the continental land mass under the ocean to where the slope leading to the ocean bottom begins. The shelf begins at the low watermark and extends out to a depth of 100 fathoms, approximately 600 feet. S. Rep. No. 411, 83d Cong., 1st Sess. 4 (1953).

[2] H. R. Rep. No. 215, 83d Cong., 1st Sess. 25 (1953).

[3] La. Ann. Stats. tit. 6 § 9311 (1939).
Texas Laws, 47th Leg., Act of May 16, 1941.

[4] Texas Laws, 50th Leg., Act of May 23, 1947.

[5] H. R. Rep. No. 215, 83d Cong., 1st Sess. 25 (1953).

[6] H.R.J. Res. 225, 79th Cong., 2d Sess. (1946). When the original colonies signed the Constitution there was no real concern over the adjacent ocean. However, with America's development as a merchant power, the United States claimed an ocean "belt" around her coast. The width of this belt was just greater than cannon range, that is, three miles. As time went on a kind of dual jurisdiction was claimed by the States - the United States had jurisdiction over navigable waters and the adjacent State had jurisdiction over lands beneath navigable waters. The States later admitted to the Union submitted Constitutions describing their borders as extending three miles beyond the low watermark. H. R. Rep. No. 215 83d Cong., 1st Sess. 64-66 (1953).

[7] H. R. Doc. No. 765, 79th Cong., 2d Sess. (1946).

California, the United States Supreme Court came to grips with the problem and held that the Federal Government had paramount rights over the submerged lands.[8]

Immediately following the California decision, a number of bills were introduced in Congress dealing with the submerged lands within the States' historic boundaries. Some of the bills contained revenue sharing provisions.[9] The States were usually given the thirty-seven and one-half per cent used in the Mineral Leasing Act.[10] None of the revenue sharing bills ever passed Congress.[11]

In 1952 Congress again passed a resolution granting the States the submerged lands within their historic boundaries.[12] President Truman vetoed the resolution, stating:

> "... I have concluded that I cannot approve this joint resolution, because it would turn over to certain States, as a free gift, very valuable lands and mineral resources of the United States as a whole - that is, of all the people of the country. I do not believe such an action would be in the national interest, and I do not see how any President could fail to oppose it.
>
> "Second, the Congress should provide for the disposition of the revenues obtained from oil and gas leases on the undersea lands. Senate Joint Resolution 20, as introduced by Senators O'Mahoney and Anderson, would have granted the adjacent coastal States 37-1/2 per cent of the revenues from submerged lands of the marginal sea. I would have no objection to such a provision, which is similar to existing provisions under which the States receive 37-1/2 per cent of the revenues from the Federal Government's oil producing public lands within their borders."[13]

Congress continued to wrestle with the problem through the Truman Administration, and into 1953. After prolonged debate (including a Senate filibuster by opponents of the Act), Congress passed the Submerged Lands Act in 1953.[14] Not all the States were in favor of this legislation, and a number of them even sought to have the courts declare the Act unconstitutional. In a per curiam decision the United States Supreme Court dismissed this suit stating that the Congress' authority to dispose of the land as it saw fit had already been decided.[15]

---

[8] 332 U.S. 19 (1947). This case, United States v. Louisiana, 339 U.S. 699 (1950), and United States v. Texas, 339 U.S. 707 (1950), dealt with the issue of the ownership of the submerged lands, and the States were unsuccessful in all three.

[9] *E.g.*, S.1988, S.2222, 80th Cong., 1st Sess. (1947), S.140, H. R. 58 82d Cong., 1st Sess. (1951).

[10] 30 U.S.C. § 191 (1964).

[11] 99 Cong. Rec. 4887 (1953).

[12] S. J. Res. 20, 82d Cong., 2d Sess. (1952).

[13] 98 Cong. Rec. 6251-3 (1952).

[14] 67 Stat. 29 (1953). This Act recognized the claims of the States to three miles from their coast, or to the extent Congress had recognized them. When Texas, Louisiana and Florida were readmitted to the Union after the Civil War, their State Constitutions defined their borders as extending three leagues (10.5 miles) rather than three miles beyond the low watermark. Congressional acceptance of these Constitutions was considered recognition for purposes of the Submerged Lands Act.

Once the States had been granted the area three miles from their dry boundaries, Congress turned its attention to the administration of that portion of the Continental Shelf claimed by the United States but not surrendered to the coastal States. During the drafting of the Submerged Lands Act, the House had included a provision for the administration of the Outer Continental Shelf. This provision was deleted before passage of the Act, but was revived shortly thereafter.[16] Although the representatives of some of the coastal States tried to carve out a share of the Outer Continental Shelf revenues for their States,[17] the remarks of Senator Cordon, found below, appear more representative of Congressional feelings, at least in the Senate:

> "If the pending amendment (to study the desirability of distributing some part of revenues generated in the Outer Continental Shelf to the abutting States) be adopted, the good faith of the Congress of the United States will be pledged to reimburse the States adjacent to the area of the Outer Continental Shelf for expenses incurred by such States in furnishing services of State and local governments to (1) individuals who are employed in connection with operations described in section 4(b) of this Act and reside in such States, (2) families of such individuals, and (3) persons or companies engaged in such operations who establish shore bases and carry on other activities within such States in support of such operations.

---

[15] Alabama v. Texas, 347 U.S. 272 (1954). Alabama and Rhode Island brought the action against Texas, Louisiana and California. In a subsequent case, U.S. v. Florida, 363 U.S. 121 (1960), the Supreme Court upheld the provision that extended the borders of Florida, Louisiana and Texas three leagues into the Gulf rather than the three miles given the other coastal States.

[16] H. R. Rep. No. 413, 83d Cong., 1st Sess. (1953).

[17] For example, Senator Long of Louisiana filed a minority report on a bill which contained no revenue sharing provision, which stated: "The bill, by denying the States any powers of taxation and refusing them any portion of the revenues which might be derived from the outer Continental Shelf, fails to recognize the tremendous financial burdens which operations in the area will place upon the States concerned." S. Rep. No. 411, 83d Cong., 1st Sess. 65(1953).

Id. at 67.

"Where Federal ownership of property or Federal activities within a State has increased the burden of State services, it has been an historic policy that some type of sharing of mineral revenues or payments in lieu of taxes is used to reimburse the State for the additional loss of revenue or increase in costs as the case may be."

"Mr. President, I was one of those who stood foursquare throughout the years for the basic proposition that submerged lands within the boundaries of the maritime and Great Lake States should belong to those States. As Acting Chairman of the Senate Interim Committee, I reported a measure for that purpose on behalf of the Committee this year, and that measure has been passed and signed into law as Public Law 31. Under that measure, the right, title and ownership of the maritime States to all the natural resources within their seaward boundaries was 'recognized, confirmed, established, vested in and assigned to' the several States. This action by the Congress of the United States was one of simple equity, in the opinion of the Senator from Oregon.

"AREAS BEYOND STATE BOUNDARIES

"However, Mr. President, there comes a time when we must stop and take a look. So when the call comes to go beyond those submerged lands within State boundaries into the area outside of those States, and make a payment, then, in my opinion, the time has come to take the long look.

"It has been said that there will be many services performed for the people who work on the structures in the outer Continental Shelf, and that those services are Governmental services performed by the State. There will be such services performed, but, Mr. President, most of the dollars these workers will receive as wages - and those wages will be high - will be spent in abutting coastal States where most of them will live and maintain their families. They will buy food and clothing there; pay for medical and legal services; go to local theaters and restaurants; buy automobiles and gasoline. On much of these goods and services they will pay direct taxes. All of their expenditures will increase the prosperity of the community and the State.

"CONTRIBUTIONS TO STATES' PROSPERITY

"Many of the workers engaged in off-shore operations will own their own homes in the abutting States. They will do everything other citizens of the State do there; they will pay their taxes there.

"The companies holding the leases will have to build and maintain very substantial shore installations within the abutting States, and such shore installations will be subject to local taxes. If a State does not have a system of taxation by which the capital investment within the State can be reached, certainly it can provide such a system. This is the ordinary ad valorem tax system

> "that is in operation in virtually all States of the Union, so far as I am advised.
>
> "The corporations holding leases will be spending very substantial sums for equipment and supplies in the nearby coastal States. I estimate that 80 cents out of every dollar of overhead expended in the operations of the Continental Shelf will be spent in the adjoining States...."
>
> "COMPARISON WITH FEDERAL AREAS WITHIN STATE
>
> "A comparison has been made between the area on the outer Continental Shelf and Federally owned lands within States. The difference lies in the fact that the area of the Continental Shelf is not within States; it is an area outside the States. It is an area subject to the jurisdiction and control of the United States of America....
>
> "The propounding of this Amendment is simply Chapter III in the attempt of the States along the Gulf to get some portion of the receipts from the areas outside their boundaries. Call them reimbursements; call them local taxes or call them severance taxes, or what have you; what is desired is some portion of the receipts from Federal resources in the area outside those States....
>
> "I do not believe there is a Senator who did not understand, when we passed the submerged lands bill, that we were excluding from its operation any interest on the part of those States in an area outside their boundaries."[18]

This would seem to have been President Eisenhower's feeling also, for when he signed the Submerged Lands Act he declared:

> "This measure also recognizes the interests of the Federal Government in the submerged lands outside of the historical boundaries of the States. Such lands should be administered by the Federal Government and the income therefrom should go into the Federal Treasury."[19]

The revenue provision of the Outer Continental Shelf Act, as enacted, stated:

> "The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis

---

[18] 99 Cong. Rec. 7253 (1953). The Senate then defeated an amendment which would have given the adjacent States some of the revenues generated on the Outer Continental Shelf by a vote of 61-18. Id. at 7254. For similar sentiments on the feelings of Congress regarding the sharing of revenues from OCS lands with the adjacent States see 99 Cong. Rec. 7132 (1953) (remarks of Senator Daniel) and 99 Cong. Rec. 4889 (1953) (remarks of Representative Yorty).

[19] S. Rep. No. 411, 83d Cong., 1st Sess. 52 (1953).

for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom....

"Disposition of Revenues. - All rentals, royalties, and other sums paid to the Secretary or the Secretary of the Navy under any lease on the outer Continental Shelf for the period from June 5, 1950, to date, and thereafter shall be deposited in the Treasury of the United States and credited to miscellaneous receipts."[20]

---

[20] 43 U.S.C. §1338 (1964).

FEDERAL STATUTE DIGEST NO. LX

Act of June 9, 1954 (St. Lawrence Seaway Act)
68 Stat. 93, 95 (1954), as amended, 33 U.S.C. § 986 (1964)

I. Background

By the St. Lawrence Seaway Act of June 9, 1954,[1] Congress provided for the creation of the St. Lawrence Seaway Development Corporation and authorized it to enter into agreements with Canada for the joint construction, operation, and maintenance of the St. Lawrence Seaway and Power Project. In carrying out these responsibilities, the Corporation is authorized, among other things, to acquire land for the project and to make certain payments in lieu of property taxes with respect to such acquired lands.

II. Provision for Payments and its Administration

A. Pertinent text of the Statute

33 U.S.C. § 986 (1964) provides as follows:

> "The Corporation is authorized to make payments to state and local governments in lieu of property taxes upon property which was subject to state and local taxation before acquisition by the Corporation. Such payments may be in the amounts, at the times, and upon the terms the Corporation deems appropriate, but the Corporation shall be guided by the policy of making payments not in excess of the taxes which would have been payable for such property in the condition in which it was acquired, except in cases where special burdens are placed upon the state or local government by the activities of the Corporation or its agents. The Corporation, its property, franchises, and income are hereby expressly exempted from taxation in any manner or form by any state, county, municipality, or any subdividion thereof, but such exemption shall not extend to contractors for the Corporation."

---

[1] 33 U.S.C. §§ 981-90 (1964).

B. Congressional rationale for payments

The only reference in the legislative history as to the purpose of the provision is in the Senate Foreign Relations Committee's report on the bill:

> "This section follows current policy in authorizing the Corporation to make payments in lieu of property taxes on property which is subject to state and local taxation before acquisition by the Corporation."2/

C. Administration

The St. Lawrence Seaway Corporation is under the control of the Department of Transportation.3/ Although the Corporation has issued regulations concerning the operation and maintenance of the Seaway,4/ they do not treat the administration of the payment in lieu of tax provision. There are no other official documentary materials detailing its administration. Consequently, the information contained herein has been derived from personal or telephone interviews and correspondence with responsible Corporation personnel.

D. Lands for which payments are made

The statute authorizes payments with respect to "property which was subject to state and local taxation before acquisition by the Corporation." The land which has been acquired by the Corporation is located near Massena, New York, surrounding what is now the Wiley-Donero Ship Channel.

E. Recipients of payments and restrictions on their use

The statute authorizes payments to those "state and local governments" which, by implication, exercised taxing jurisdiction over the acquired lands. Payments are made to the Town of Massena, the Village of Massena, Massena School District, and St. Lawrence County. The statute leaves the time of payment to the Corporation's discretion, and the legislative

---

2/ S. Rep. No. 441, 83rd Cong., 1st Sess. 3 (1953).

3/ 80 Stat. 931, 943 (1966), 33 U.S.C. § 981 (Supp. II, 1965-1966).

4/ 33 C.F.R §§ 400-403 (1967).

history is silent on this point. As a matter of practice, the Corporation has considered it appropriate to make its payments in accordance with the regular billing schedule of the various entities.[5] Although the statute authorizes the payments, if any, to be "upon the terms the Corporation deems appropriate," no restrictions on the use of the payments by the recipients have been imposed.[6]

F. Calculation of payments

The statute gives wide discretion to the Corporation as to the amount of payments it may make to the State and local governments. However, it does provide that "the Corporation shall be guided by the policy of making payments not in excess of the taxes which would have been payable for such property in the condition in which it was acquired, except in cases where special burdens are placed upon the State or local government by the activities of the Corporation or its agents". Under this general guideline, the Corporation has chosen to make payments equal to the taxes which would be paid on the lands owned by the Corporation, if such lands were subject to State and local taxation.[7] There have never been any requests for additional payments under the "special burdens" proviso, nor have any been made by the Corporation on its own motion.[8]

The Corporation requires that the governmental taxing authority certify: (1) that the property acquired by the Corporation has been removed from the tax rolls, (2) what the assessed value of the property was at the time of removal (subject to the Corporation's verification), (3) what is the applicable tax rate, and (4) what is the amount of their tax loss for the current year. The assessed value is fixed at the time of the removal of the land from the tax rolls, but is subject to change from year to year by the taxing authority. The local communities have not made any attempt to revalue land acquired by the Corporation in light of the improvements made on such land. The payments which are made go directly to the local governments in lump sums equal to the tax payments which they have lost.[9]

---

[5] Telephone interview with David C. Zimmerman, Esq., General Counsel for the St. Lawrence Seaway Development Corporation, October 31, 1967.

[6] *Ibid*.

[7] *Ibid*.

[8] *Ibid*.

[9] *Ibid*.

FEDERAL STATUTE DIGEST NO. LY

Act of August 12, 1955 (Trinity River Basin Project)
69 Stat. 719, 720 (1955)

I. Background

In 1955, Congress authorized the Trinity River division of the Central Valley Project, California, for the purposes of providing water storage for irrigation, power generation, and flood control. Incident to the construction and land acquisition authority granted by the Act, Congress also provided for certain assistance payments to Trinity County, California. Such payments include an annual in lieu of tax payment as well as certain impact payments payable only during the construction phase of the project.

II. Provision for Payments and Administration

A. Pertinent text of the Statute

Section 5 of the Act provides as follows:[1]

> "The Secretary is authorized to make payments, from construction appropriations, to Trinity County, California, of such additional costs of repairing, maintaining, and constructing county roads as are incurred by it during the period of actual construction of the Trinity River division and as are found by the Secretary to be properly attributable to and occasioned by said construction. The Secretary is further authorized and directed to pay to Trinity County annually an in-lieu tax payment out of the appropriations during construction and from the gross revenues of the project during operation an amount equal to the annual tax rate of the county applied to the value of the real property and improvements taken for project purposes in Trinity County, said value being determined as of the date such property and improvements are taken off the tax rolls. Payments to the public school districts in the project area affected by construction activities shall be made pursuant to existing law."

B. Congressional rationale for payments

The legislative history of the payment in lieu of tax provision indicates that it was enacted to compensate Trinity County, California for the loss of tax revenues occasioned by the acquisition of land for the project.

---

[1] 69 Stat. 719, 720 (1955).

Prior to the commencement of the project and the acquisition of land therefore, the Federal Government already owned a large portion of the county. Congress felt that the construction project and the acquisition of additional land would impose additional costs on the local government and accordingly made provision for financial assistance to the county. The Congressional reasoning is clearly set out in excerpts from the Senate and House reports on the legislation set out below:

> "Assistance to Trinity County
>
> "The United States owns approximately 90 per cent of the land area in Trinity County. The limited resources of the county government the committee finds, would be heavily taxed as a result of construction activities by the United States. The county would unquestionably be heavily burdened by construction activities in the area and there would also be loss of tax revenues. In recognition of this prospective situation, H.R. 4663 authorizes payments to Trinity County for additional costs attributable to the construction activities in connection with the Trinity division, and also authorizes an annual in-lieu repayment equal to the loss of taxes to the county."[2]
>
> "The legislation authorizes payments to Trinity County for additional costs of Government attributable to construction activities in the county, and authorizes an annual in-lieu tax payment equal to the loss of taxes to the county. The committee believes that these payments, although not normally authorized for reclamation projects, are warranted in this instance The Federal Government owns approximately 90 per cent of the land area in Trinity County and the county would, without question, be unduly burdened by the construction activities in the area and the loss of tax revenues....
>
> "Section 5 of the bill authorizes payments to Trinity County of additional costs of government incurred during the period of construction that are attributable to the construction activities in the area...."

---

[2] H.R. Rep. No. 602, 84th Cong., 1st Sess. 6 (1955).

C. Administration

The payment in lieu of tax provision and the impact payments are administered by the Bureau of Reclamation, Department of the Interior. The Bureau has no regulations or manuals etc. detailing the manner in which such payments are made. Accordingly, the information contained herein is based on personal or telephone interviews and correspondence with responsible Bureau personnel.

D. Lands for which payments are made

The statute authorizes in lieu payments to be made on lands taken for the project which were formerly subject to taxation. The impact payments were made to Trinity County for maintaining and constructing roads during the construction phase of the project and to school districts.

E. Recipient of payments and restrictions on their use

Trinity County, California is the recipient of the in lieu tax payments and the impact payments. The statute provides no restrictions on the use of the in lieu payments, which are made twice annually. The statute also contemplates that the impact payments are to be used for road construction, repair and maintenance by the county. Additional impact payments may be made to local school districts. Once these payments have been made, the Bureau does not check to see if the payments are used for the purposes specified. In actual practice these impact payments are made by the contractor and not by the Bureau.3/

F. Calculation of payments

With respect to the in lieu tax payments, the amounts paid are equal to the county's annual tax rate applied to the value of the real property and improvements as of the time the property was taken from the tax rolls. Semiannually each year, Trinity County sends a tax bill to the Regional Office of the Bureau of Reclamation which has the responsibility for administering the Act and making the payments. The bills are rendered in the same manner as they would be to any other tax payer. The Bureau of Reclamation verifies the bill and authorizes the appropriate payment.4/ While the annual assessment rates may vary from year to year, the assessed valuation of the property remains the same as required by

---

3/ Telephone interview, on May 1, 1968, with Mr. Charles H. Taylor, Systems Accountant, Bureau of Reclamation.

4/ Telephone interview on August 3, 1967 with Mr. Alfred Burrows, Compliance Officer, Bureau of Reclamation.

the statute. This is so even if there is a general revaluation of other property within the county. According to information supplied by the Bureau of Reclamation there are no manuals or handbooks which deal with the revenue sharing provision of the law.[5]

With respect to the "impact" payments made to the county for maintenance, construction, and repair of roads, the normal procedure of the Bureau is to obtain the average per mile cost of highway upkeep for the previous five years. A memorandum of understanding is then entered into between the county and the Bureau, whereby the Bureau agrees to pay a certain percentage of the increased costs of highway maintenance which is attributable to the additional wear and tear caused by the project. 6/

Payments to school districts are based on the per capita increase of students in the local school system attributable to children of construction workers.[7]

5/ Telephone interview on August 3, 1967 with Mr. James S. Reece, Chief Division of Audit and Financial Review, Bureau of Reclamation

6/ Supra note 3.

7/ Telephone interview on March 20, 1968 with Mr. James S. Reece, Chief Division of Audit and Financial Review, Bureau of Reclamation.

FEDERAL STATUTE DIGEST NO. LZ

Act of August 12, 1955 (Payments on Transferred
RFC Property) 69 Stat. 721, 722, as amended,
(1955), 40 U.S.C. §§ 521-24 (1964)

I. Background

The Reconstruction Finance Corporation (RFC) was established in 1932 during the depression to make loans to businesses, especially to banks, to prevent them from going bankrupt. With the advent of World War II the objectives of the RFC were expanded to provide financing of defense production facilities. In many cases defense facilities were actually built by a subsidiary of the RFC, the Defense Plant Corporation. The legislation creating the RFC provided that its real property be taxable by local communities.[1]

At the end of the war many of the defense plants constructed by the Government were no longer needed and were sold to private industry. Others were simply declared surplus to the needs of the RFC and were transferred to other agencies of the government.

However, the waiver of immunity from local taxation which applied to property of the RFC did not apply to such property when it was transferred to other agencies of the Government. In 1952 both the Comptroller General and the Court of Claims ruled to this effect.[2]

In response to this decision and ruling, legislation was introduced to require Government agencies having control of transferred RFC property to make payments to state and local taxing authorities equal to the real property taxes which would be assessed on such property were it privately owned. The legislation is interesting in that it contains an explicit statement of its purpose. While the legislation was intended to be temporary in nature,[3] the law has been successively amended to continue it in force.[4]

No payments are made under the Act if other in lieu of tax payments are being made with respect to the same property[5] and payments are not made unless the transfer of property from the RFC in fact causes undue burdens or disrupts operations of the local taxing authority.[6] This is in accord with the legislative purpose of the act as interpreted by the Comptroller General.[7]

---

[1] 47 Stat. 5 (1932).

[2] Board of County Supervisors of Sedgwick County v. United States, 123 Ct. Cl. 304 (1952); 32 Comp. Gen. 134 (1952).

[3] See 101 Cong. Rec. 12297 (1955) (Remarks of Senator Saltonstall). The original legislation provided that payments would be made until January 1, 1959.

[4] 72 Stat. 456 (1958); 74 Stat. 165 (1960); 76 Stat. 805 (1962); 78 Stat. 226 (1964) 81 Stat. 119 (1967).

[5] 40 U.S.C. § 524 (1964).

II. Provision for Payments and its Administration

A. Pertinent text of the statute

40 U.S.C. §§ 521, 523 (1964) provide as follows:

> "The Congress recognizes that the transfer of real property having a taxable status from the Reconstruction Finance Corporation or any of its subsidiaries to another Government department has often operated to remove such property from the tax rolls of States and local taxing authorities, thereby creating an undue and unexpected burden upon such states and local taxing authorities and causing disruption of their operations. It is the purpose of this title to furnish temporary measures of relief for such States and local taxing authorities by providing that payments in lieu of taxes shall be made with respect to real property transferred on or after January 1, 1946....
>
> "Where real property has been transferred on or after January 1, 1946, from the Reconstruction Finance Corporation to any Government department, and the title to such real property has been held by the United States continuously since such transfer, then on each date occuring on or after January 1, 1955, and prior to January 1, 19[69], on which real property taxes levied by any State or local taxing authority with respect to any period become due, the Government department which has custody and control of such real property shall pay to the appropriate State and local taxing authorities an amount equal to the amount of the real property tax which would be payable to each State or local taxing authority on such date if legal title to such real property had been held by a private citizen on such date and during all periods to which such date relates."

---

[6] 36 Comp. Gen. 592 (1957).
[7] Ibid.

B. Congressional rationale for payments

An unusually complete statement giving the Congressional rationale for this legislation is found in the House report dealing with the bill. Of interest is the consideration given to the 1955 recommendations of the Commission on Intergovernmental Relations concerning local taxation of Government owned commercial properties:

"The purpose of the bill, H.R. 6182, is to furnish temporary relief to local communities which have suffered financially because of the removal from State and local tax rolls of Federal property through a transfer of title from the Reconstruction Finance Corporation to another Government department or agency. This bill applies only to real property which was once held by the Reconstruction Finance Corporation or one of its subsidiaries, and has been transferred on or after January 1, 1946, from the Reconstruction Finance Corporation to any Government department. If the title to such real property has been held by the United States continuously since such transfer, then for the period commencing January 1, 1955, and terminating January 1, 1959, the bill provides that the Government department which has custody and control of such real property shall make a payment in lieu of taxes to the appropriate State and local taxing authorities. This payment shall be in an amount equal to the amount of the real property tax which would have been payable on any date on which such taxes would have been due during the period specified if legal title to such real property had been held by a private citizen.

"Congress exempted the personal property of the Reconstruction Finance Corporation and its subsidiaries from taxation by State and local taxing authorities. Congress, however, specifically made the real property of the Reconstruction Finance Corporation and its subsidiaries subject to special assessments for local improvements and subject to State, Territorial, and local taxation to the same extent according to its value as other real property (15 U.S.C. 694j (a) (6)). Because of a ruling by the United States Court of Claims in 1952, and a subsequent ruling by the Comptroller General in the same year, certain real properties that had formerly been subject to local taxation have now been rendered nontaxable by the local authorities. This is true whether complete legal title to real property has been transferred from a Government corporation to another Government department, or whether the Government corporation retains legal title and transfers custody, control or accountability for the real property to another Government department. Thus, real property which has been on the State and local tax rolls by specific provisions of an act of Congress

> has been taken off such tax rolls by a transfer to another Government department without any break in the chain of title being held by the United States. In the view of your committee this has resulted in the imposition of an unjustifiable financial burden upon communities. The nature and use of the commercial or industrial facilities involved has not changed. The Congress has already provided that these properties should be taxed when they are held by and under the exclusive control of the Reconstruction Finance Corporation. It, therefore, appeared just and necessary that provisions be made, as in this bill, at least on a temporary basis, to make payments in lieu of taxes until a comprehensive policy with regard to payments in lieu of taxes shall have been enacted by Congress....
>
> "Provisions of H.R. 6182 are, therefore, in accord with the recommendations of the Commission on Intergovernmental Relations and its study committee. More important, they are in accord with what your committee believes to be the necessities of the situation. Certain commercial or industrial-type properties have been on the State and local tax rolls as provided by an act of Congress. By the accident of transfer from the Reconstruction Finance Corporation to another government department they have been removed from such tax rolls with an adverse effect upon local financial structures which is unjustifiable. Local governments have committed themselves to, and have made subsequent expenditures in many instances for local government services on the basis of tax revenues derived from real property taxes, including property formerly owned by the Reconstruction Finance Corporation. The removal of these properties from the real property tax rolls has undoubtedly created a real hardship in these communities...."8/

8/ H.R. Rep. No. 1453, 84th Cong., 1st Sess. 1,3 (1955). The Hearings and the Congressional debates contain the same material. See Hearings Before the House Committee of Government Operations on Amendments to the Federal Property and Administrative Services Act of 1949 as Amended (Payments in Lieu of Taxes - Property Transferred from Reconstruction Finance Corporation to Other Government Departments) on H.R. 1781, 6152, 7184, 7191 and 7291. 84th Cong., 1st Sess. (1955); 101 Cong. Rec. 12097-101 (1955). The recommendation of the Commission on Intergovernmental Relations may be found in Payments in Lieu of Taxes and Shared Revenues, a Study Commission Report submitted to the Commission p.59 (1955).

C. Administration

The GSA administers this statute. GSA has not issued regulations concerning this statute but it does have "internal" regulations concerning the method of payments. The material contained herein is based on these internal regulations and on correspondance and telephone interviews with responsible GSA personnel.

D. Lands for which payments are made

The statute provides for in lieu of tax payments to be made on real property of the RFC transferred to other Government departments on or after January 1, 1946.

E. Recipients of payments and restrictions on their use

The statute provides that in lieu of tax payments are to be made to State and local units of government levying taxes on transferred RFC property equal to the amount of such taxes which would be payable if the property were privately owned. In lieu of tax payments are not made if in lieu of tax payments are made with respect to the same property "under any other provisions of law".[9] The statute provides that the payments are to be made on the local due date of such taxes and every effort is made by GSA to meet the tax due date.[10] The statute also provides that payments are to be made where the transfer of RFC property to a Government department creates "an undue and unexpected burden" on the States and local authorities and causes "disruption of their operations", and the Comptroller General has ruled that payments shall not be made unless burdens in fact have been imposed on local taxing authorities by the transfer of RFC properties to Government departments.[11] No restrictions are placed on the use to which payments may be put by the recipient communities.

F. Calculation of payments

The local taxing authorities present a bill to GSA for the amount which they believe due. GSA determines whether the amount claimed is equitable in comparison with similar properties which are privately owned.

---

[9] 40 U.S.C. § 524 (a)(b)(1) (1964).

[10] Letter dated January 25, 1968 to EBSMC from W. E. Whalen, Chief Counsel Site Acquisition, Space Assignment and Utilization, GSA. EBSMC PLLRC File No. 229.

[11] 36 Comp. Gen. 592 (1957).

If it should appear to GSA that a billing is excessive, discussions would be instituted designed to arrive at an appropriate adjustment. In one instance where the character and use of the property with respect to which payments were being made, GSA has refused to accept the local taxing authority's assessment based on the former use of the property. The local tax authorities have instituted suit in the Court of Claims to settle the matter.

The internal regulations provide that payments be made only with respect to property transferred and not with respect to any improvements that may have been placed on the property after transfer.[12] The grounds for this regulation are that improvements are not part of the RFC property transferred and that the statute contains no authorization to make payments on any other type of property.[13] Payments are made by voucher submitted by GSA to the Treasury. The Treasury draws a check which GSA forwards to the appropriate taxing authorities accompanied by the tax bill to identify the payment.

The internal regulations also cover those situations where holding agencies other than GSA make payments and those situations where GSA requires the lessee or purchaser of former RFC property to make the payments.[14]

12/ Whalen letter, *supra* note 10.
13/ *Ibid*.
14/ *Ibid*.

FEDERAL STATUTE DIGEST NO. LAA

Act of September 14, 1960 (Indemnity Selection Lands)
74 Stat. 1024 (1960), 43 U.S.C § 852 (1964)

I. Background

When the States were admitted into the Union, the Federal Government granted to them certain public lands within their borders.[1] Most of the States received sections 16 and 32 of each township, although a few states received only one section and others received as many as four.[2] Congress generally stated that these sections were to be used for the support of the public schools within the States. Title to these sections was vested in the States upon admission into the Union, or if the land had not been surveyed at the time of their admission, title was vested in the States upon completion of the survey of the land.[3] The survey was required in order to determine the location of the granted lands. Many of the sections, which had been granted to the States, were appropriated under the public land laws and consequently were no longer available to the States. To rectify this situation, Congress, in 1891, enacted the Indemnity Selection Law[4] which permitted the States to select other public lands in lieu of the lands which had been granted to the States, but which had been disposed of under other public land laws, or were subject to other outstanding interests.

Prior to 1958, the States were not permitted to select mineral-bearing lands under the Indemnity Selection Law. In 1958, Congress allowed the States the right to make indemnity selection of mineral lands if the lands which originally had been granted to the State were mineral lands.[5] This legislation included a provision which required a State, if it selected land subject to a lease or permit, to select all of the lands subject to that lease or permit. In this situation the selecting State succeeded to the rights of the United States and was entitled to receive any rents and royalties being paid under any preexisting lease or permit.

However, situations arose where a State was not able to select all of the lands subject to a particular lease. Accordingly, in 1960 Congress permitted the States to select only part of the lands subject to a prior lease or permit[6] but provided in this case that the United States retain the rights to the minerals and to the rents and royalties flowing therefrom. To compensate the States making such selections for the revenues they would have received had they been able to select all of the land subject to a particular lease or permit, Congress provided that ninety per cent of the revenues received by the United States from the selected lands should be returned to the States. The remaining ten per cent of the revenue is deposited in the U.S. Treasury to cover management costs.

---

[1] See various State enabling acts, Digest LA.
[2] See Hibbard, Benjamin H., A History of the Public Land Policies. University of Wisconsin Press, (Madison, 1965)(Copyright 1924) p. 322.
[3] See United States v Morrison; 240 U.S. 192 (1916).
[4] 26 Stat. 796 (1891); 43 U.S.C. §§ 851-52 (1964).
[5] 72 Stat. 928 (1958); 43 U.S.C. § 852(a)(1964).
[6] 43 U.S.C. § 852(a)(1964).

II. Provision for Payments and its Administration

A. Pertinent text of the statute 43 U.S.C. § 852(a)(1964) provides as follows:

> "...(3) Land subject to a mineral lease or permit may be selected if some of the land subject to that lease or permit is in a producing or productive status, subject, however, to the restrictions and conditions of the preceding and following paragraphs of this subsection.
>
> "(4) If a selection is consummated as to a portion but not all of the lands subject to any mineral lease or permit, then, as to such portion and for so long only as such lease or permit or any lease issued pursuant to such permit shall remain in effect, there shall be automatically reserved to the United States the mineral or minerals for which the lease or permit was issued, together with such further rights as may be necessary for the full and complete enjoyment of all rights, privileges and benefits under or with respect to the lease or permit: Provided, however, that after approval of the selection the Secretary of the Interior shall determine what portion of any rents and royalties accruing thereafter which may be paid under the lease or permit is properly applicable to that portion of the land subject to the lease or permit selected by the State, the portion applicable being determined by applying to the sum of the rents and royalties the same ratio as that existing between the acreage selected by the State and the total acreage subject to the lease or permit; of the portion applicable to the selected land 90 per centum shall be paid to the State by the United States annually and 10 per centum shall be deposited in the Treasury of the United States as miscellaneous receipts."

B. Congressional rationale for payments

The rationale of this provision is succinctly set forth in the extract from the House report on this legislation set forth below:

> "Moreover, we do not believe it equitable to deprive a State of mineral revenue when the minerals are reserved to the United States because the State has selected only a part of the land subject to a lease or permit, whereas the State would receive full title to the minerals if it selected all of the land subject to a lease or permit. We believe that legislation should provide for the payment to the State of 90 percent of the income derived from the reserved minerals. The remaining 10 percent should be retained by the United States to cover the costs of administration." [7]

C. Administration

The statute is administered by the Bureau of Land Management (BLM) of the Department of the Interior. BLM has general responsibility for the administration of mineral leases on public lands. For a discussion of the administration of mineral leases see Digest LF.

---

[7] H.R. Rep. No. 2110, 86th Cong., 2d Sess. 5 (1960) (Letter from Roger Ernst, Assistant Secretary of the Interior).

D. Lands for which payments are made

The statute directs that payments be made with respect to mineral bearing indemnity lands selected by the States. The statute applies only to public domain lands and only where the lands which the States were originally granted were mineral bearing lands.

E. Recipient of payments and restrictions on their use

The statute provides that the states in which indemnity mineral leasing lands have been selected are to be the recipients of the payments made under this statute. The statute forms an exception to the general distribution formula provided under the Mineral Leasing Act of 1920 (Digest LF). The timing of the payments is not specified in the statute but as a matter of practice it is the same as is specified for payments made under the Mineral Leasing Act, i.e. payments are made as soon as practicable after June 30th and December 31st of each year.[8] In some cases, at the request of the States, the payments are identified by county from which the revenue is derived.[9] The statute provides no restrictions as to the use to which the States may put the moneys received, although payments made under the Mineral Leasing Act of 1920 are subject to the restriction that they be used for public schools and roads as the State legislatures may direct. In any event no audit is made by BLM as to the uses to which the moneys are actually put. The method of payment is the same as that employed with respect to the Mineral Leasing Act. BLM maintains records of the revenues produced from mineral leases on selected lands and twice annually by voucher requests the Treasury to draw checks in the appropriate amounts. BLM mails the checks to the States accompanied by a statement identifying the payments. For a more complete description of the payment procedure see subsection II E of Digest LF.

F. Calculation of payments

Except for the different allocation formula (ninety per cent rather than thirty-seven and one-half per cent), the calculation of revenues received from mineral leases is the same as described in subsection II F of Digest LF.

---

[8] Part 1373 BLM Manual.
[9] Ibid.

FEDERAL STATUTE DIGEST NO. LAB

Act of June 14, 1935 (Migratory Bird Act)
49 Stat. 378, 386 (1935), as amended, 16 U.S.C. § 715s (1964)

I. Background

In 1929, Congress, acting pursuant to the Migratory Bird Treaty of 1916,[1] enacted the Migratory Bird Conservation Act, which provided for the acquisition of land, by the Federal government, for use as migratory bird refuges.[2]

The act was amended in 1935, to provide that twenty-five per cent of the net revenue produced each fiscal year from the bird refuges was to be paid to those counties in which the refuges were located. The payments were to be used for the benefit of public schools and roads of the county or counties.[3]

By the early 1960's it had become clear that this revenue sharing provision was resulting in inequalities concerning the amount of the payments received by different counties.[4] This fact was also reflected in the difficulty which the Bureau of Sport Fisheries and Wildlife was having in acquiring additional lands for wildlife refuges because the Department of the Interior was required by statute to obtain the permission of a State before it could acquire

---

[1] 39 Stat. 1702 (1916).

[2] 45 Stat. 1222 (1929).

[3] 49 Stat. 378, 383 (1935).

[4] Stewart L. Udall, Secretary of the Interior discussed this problem:

> "The acquisition program [for Migratory Bird Refuges] has been stymied in the Dakotas because of concern by local authorities over loss of county revenues resulting from Federal acquisition. The 1961 act authorizing the accelerated wetland acquisition program provided that the Governor of the State or an appropriate State agency would first have to approve any acquisition in the State before land purchased could be consummated. The Governors of North and South Dakota have made their approval contingent upon the approval of the county boards of supervisors. They, and the Governors, have generally denied approval. This has meant that our Department has generally been unable to purchase the vitally needed wetlands in these states.

Note Continued

any additional lands for wildlife refuges not already under Federal ownership. 5/

In 1964, Congress attempted to resolve this problem by amending the statute 6/ to provide that those counties in which lands were acquired were to receive either:

(A) Three-fourths of one per cent of the cost of the areas, exclusive of any improvements made subsequently; or

(B) Twenty-five per cent of the net proceeds collected from such acquired lands in the county; whichever was greater.

4/ Continued:

"Loss of revenues to local governments is a legitimate concern with which I can sympathize. Under existing law, enacted in 1935, the counties in which our refuges are located receive 25 percent of the net revenue from operations on national wildlife refuges, such as oil production, grazing, timber harvest, and the like. Nationwide, these net revenues amount to the substantial sum of $2½ million annually. The payment to the counties each year has thus been something in excess of one-half million dollars. The 25 percent share of revenues is paid to the counties where the revenue is earned. Unfortunately for the success of this program, these payments are badly out of balance. In many of the important wetland areas of the northern prairies, the refuge revenues are nil or close to it. Twenty-five percent of nothing is nothing. Consequently, some counties of the northern prairies, where acquisition of production habitat is so important, receive little or nothing in the way of payments from refuge revenues. The county commissioners and Governors in those areas, where national wildlife refuge holdings are already substantial, are reluctant to see more and more land go off the tax rolls without adequate compensating provision to help sustain the county revenue base."

Hearings on H.R. 1127, H.R. 2393, H.R. 5996, H.R. 9030 and H.R. 11008 before the Subcommittee on Fisheries and Wildlife Conservation of the House Committee on the Merchant Marine and Fisheries, 88th Cong. 2d Sess. 34 (1964). (Statement of S.L. Udall, Secretary of the Interior).

5/ 75 Stat. 813 (1961), 16 U.S.C. § 715f (1964).
6/ 78 Stat. 701 (1964), 16 U.S.C. § 715s (1964).

II. Provision for Payments and its Administration

A. Pertinent text of the statute

16 U.S.C. § 715s (1964), provides in part as follows:

"(a) Beginning with the next full fiscal year and for each fiscal year thereafter, all revenues received by the Secretary of the Interior from the sale or other disposition of animals, timber, hay, grass, or other products of the soil, minerals, shells, sand, or gravel, from other privileges, or from leases for public accommodations or facilities incidental to but not in conflict with the basic purposes for which those areas of the National Wildlife Refuge System were established, during each fiscal year in connection with the operation and management of those areas of the National Wildlife Refuge System that are solely or primarily administered by him, through the United States Fish and Wildlife Service, shall be covered into the United States Treasury and be reserved in a separate fund for disposition as hereafter prescribed. Amounts in the fund shall remain available until expended, and may be expended by the Secretary without further appropriation in the manner hereafter prescribed. The National Wildlife Refuge System (hereafter referred to as the System) includes those lands and waters administered by the Secretary as wildlife refuges, wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas established under any law, proclamation, Executive, or public land order.

"(b) The Secretary may pay from the fund any necessary expenses incurred by him in connection with the revenue-producing measures set forth in subsection (a).

"(c) The Secretary, at the end of each fiscal year, shall pay, out of the net receipts in the fund (after payment of necessary expenses) for such fiscal year, which funds shall be expended solely for the benefit of public schools and roads as follows:

"(1) to each county in which reserved public lands in an area of the System are situated, an amount equal to 25 per centum of the net receipts collected by the Secretary from such reserved public lands in that particular area of the System: Provided, That when any such area is situated in more than one county the distributive share to each county from the aforesaid receipts shall be proportional to its acreage of such public lands therein; and

"(2) to each county in which areas in the System are situated that have been acquired in fee by the United States, either (A) three-fourths of 1 per centum of the cost of the areas, exclusive of any improvements to such areas made subsequent to Federal acquisition, such cost to be adjusted to represent current values as determined by the Secretary for the first full fiscal year after enactment of this Act and as redetermined by him at five-year intervals thereafter, or (B) 25 per centum of the net receipts collected by the Secretary from such acquired lands in that particular area of the System within such counties, whichever is greater. The determinations by the Secretary under this subsection shall be accomplished in such manner as he shall consider to be equitable and in the public interest, and his determinations hereunder shall be final and conclusive.

"(d) The payments under subsection (c) of this section to the counties in the United States for any one fiscal year shall not exceed the amount of net receipts in the fund for that fiscal year and, in case the net receipts are insufficient for a particular fiscal year to pay the aggregate amount of the payments for that fiscal year to the counties, the payment to each county shall be reduced proportionately.

"(e) Any moneys remaining in the fund after all payments are made for any fiscal year may be used by the Secretary thereafter for management of the System, including but not limited to the construction, improvement, repair, and alteration of buildings, roads, and other facilities, and for enforcement of the Migratory Bird Treaty Act, as amended (16 U.S.C. §§ 703-711).

"(f) The disposition or sale of surplus animals, minerals, and other products, the grant of privileges, and the carrying out of any other activities that result in the collection of revenues within any areas of the System may be accomplished upon such terms, conditions, or regulations, including sale in the open markets, as the Secretary shall determine to be in the best interest of the United States. Further, the Secretary may dispose of such surplus animals by exchange of the same or other kinds, gift or loan to public institutions for exhibition or propagation purposes and for the advancement of knowledge and the dissemination of information relating to the conservation of wildlife in accordance with such regulations as he may prescribe."

B. Congressional rationale for payments

A review of the legislative history of the 1935 revenue sharing provision [7] indicates that it was intended to compensate the counties for the loss in tax revenues resulting from the tax exempt status of the lands. As stated in the House Report on the legislation:

> "The purpose of this title is to authorize payment to the states of 25 per cent of any revenue that may be derived from certain wildlife refuges and reservations.... It is the application to these refuges of the plan that has obtained under Congressional legislation for many years with respect to participation of the various States in revenues from the national forests, and is thought to be equitable and fair to the states." [8]

---

[7] 16 U.S.C. § 715s (1964).

[8] H.R. Rep. No. 886, 74th Cong., 1st Sess. 3 (1935).

However, as indicated in the House Report dealing with the 1964 amendment to the statute, the actual operation of the statute proved to be otherwise:

> "...This system for reimbursing the local county government in lieu of taxes creates an inequity. In many important wetland areas of the Northern Prairies the refuge payments are nil; consequently these areas do not receive any payments from the national wildlife refuge system. On the other hand some counties are receiving extensive benefits under the 1935 act.
>
> "In counties having substantial non-revenue producing holdings, the governing authorities are reluctant to see more and more land go off the tax rolls unless adequate compensation is provided in lieu of taxes which are now being collected." [9]

In order to overcome the local opposition to any further expansion of the wildlife refuges, as well as overcome the inequities of the payments to various counties, the revenue sharing provisions were amended. The Department of the Interior made the following comments on the selection of three-fourths of one percent or the base for revenue sharing on acquired lands:

> "In considering the payment formula problem, the Department studied the effects of using three-fourths of 1 percent of current value, as a revenue-sharing formula. The results of that study have been brought up to date in order to reflect the effect of this formula on county revenues in fiscal year 1963. We estimate that, for fiscal year 1963, the federally acquired lands within the National Wildlife Refuge System would have been subject to the payment of county taxes in the amount of approximately $800,000 if these lands were still in private ownership. Revenue payments to these same counties, in fiscal year 1963, under the revenue-sharing formula for acquired lands in S 1363 would have been approximately $709,500. Thus, if S 1363 had been enacted prior to fiscal year 1963, we estimate that these counties would have received 89 percent of the revenues they would have expected to receive if these lands were still in private ownership. It should be remembered that the need for county services such as police and fire protection, roads, and schools is lessened when these lands are in Federal ownership. Also, the counties save the costs of tax assessment, tax collection and delinquencies."[10]

---

[9] H.R. Rep. No. 1753, 88th Cong., 2d Sess. 2 (1964). See also the material quoted in note 4 supra.

[10] Hearings on S 179, S 1363, S 1720 and S 2498 before the Senate Committee on Commerce, 88th Cong. 2d Sess. 15 (1964) (letter of Robert M. Paul, Deputy Assistant Secretary of the Interior).

C. Administration

The act was originally administered by the Department of Agriculture; however, Reorganization Plan No. II of 1939, transferred the wildlife refuges to the Department of the Interior.[11] The Secretary of the Interior has issued regulations which provide, among other things, for the Bureau of Sport Fisheries and Wildlife (the "Bureau") to administer these refuges.[12]

D. Lands for which payments are made

The statute applies to all lands in the National Wildlife Refuge System, which includes those lands and water administered by the Secretary of the Interior as wildlife refuges, wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas established under any law, proclamation, Executive, or public land order. As of June 30, 1966, approximately eight million acres of public domain land and acquired land were included in National Wildlife Refuges.

E. Recipients of payments and restrictions on their use

Payments are made to the counties in which the refuges are situated. When any refuge is situated in more than one State, county, or political subdivision, the distributive share to each from the proceeds of such refuge is proportional to its area therein. These payments may only be expended for the benefit of public schools and roads in the county. No audits are conducted by the Bureau as to actual use made of the payments made.

F. Calculation of payments

The Bureau operates each wildlife refuge under a land use plan. 13/ This plan contains a breakdown of the lands in a particular refuge on the basis of the proposed use of the lands. The proceeds, which are collected by the Bureau for later distribution to the counties are based on the following:

(A) Sale of forest products

(B) Grazing leases

(C) Gaming and trapping permits (excluding duck stamp proceeds)

11/ 5 U.S.C. § 133t (1964).

12/ 50 C.F.R. § 34 et. seq. (1967).

13/ § 3412 (4) Wildlife Refuge Manual of the Bureau of Sport Fisheries and Wildlife (1967).

(D) Haying

(E) Concessions

(F) Oil and gas royalties (only in the case of Delton National Wildlife Refuge, Venice, Louisiana).

(G) Sale of surplus animals

(H) Sales of sand and gravel

(I) Other minor sales

The policies governing each sale are contained in the Wildlife Refuges Manual[14] and are basically the same, with respect to similar materials, as those followed by the Department of the Interior in general.

All proceeds collected are sent from the regional offices of the Bureau and deposited in a special refuge receipt account with the Treasury. The statute allows the Department to make deductions from this account for the necessary expenses incurred in producing the revenues.[15] These expenses are primarily personnel costs.[16]

The payments made to each county are computed as follows:

A. For reserved public domain, twenty-five per cent of net receipts from such lands in each refuge. If refuge in more than one county, payments to each county will be proportional to its acreage of refuge public lands.

B. For acquired lands either (1) three-fourth of one per cent of cost of land (excluding cost of improvements since land acquired) adjusted to represent current values, (2) twenty-five per cent of net receipts, whichever is greater.

Net receipts are defined as the

> "balance of gross refuge revenues or receipts after deducting any necessary expenses incurred in connection with sale or disposition of refuge products or granting of privileges." 17/

14/ § 3431-3484 b. Wildlife Refuge Manual (1967); EBSMC PLLRC File No. 221.

15/ 16 U.S.C. § 715s (b) (1964).

16/ Interview with Mr. George P. Spodin, Chief, Division of Realty, Division of Wildlife Refuge, Bureau of Sport Fisheries and Wildlife, April 16, 1968.

17/ § 781.4 Realty Manual, Bureau of Sport Fisheries and Wildlife (1966); EBSMC PLLRC File No. 221.

The cost of acquired lands in the counties is either the purchase price, condemnation award or appraised value if land acquired by gift, donation or exchange.[18] The statute also provides for readjustment of the cost of the lands at five year intervals. The procedures to be used in readjusting land costs are contained in the Regulations[19] as well as the "Realty Manual" of the Bureau. The latter provides the following explanation of the procedures used in readjusting land values:

> "...the land cost adjusted to represent current value will be accomplished by utilizing data compiled by the Economic Research Service of the United States Department of Agriculture and published in its periodical 'Farm Real Estate Market Developments.' The same data were previously published in the periodical 'Current Developments in the Farm Real Estate Market' of the Agricultural Research Service of the U.S. Department of Agriculture.
>
> "These periodicals contain index numbers of average value of farm real estate per acre for States. The index number for a State expresses the average market value of farm real estate for the given date as a percentage of the average value in a given base period. Average values for all other dates are expressed as a percentage of this average. Thus a current index of 157 means that values are 57 percent higher than in base period. Further, if the index for the current date is divided by the index for any other date, a measure of the percentage change in value is obtained. For example, an index for a State in 1932 was 55 and for 1959 was 157. Dividing 157 by 55 indicates that the average value for the State in 1959 was 285 percent of the value in 1932.
>
> "To adjust the cost of land in a particular refuge, the costs of all tracts acquired in each year will be determined for each county. The total cost for a particular year will be multiplied by a percentage figure which will be the index number of the current year divided by the index number of the year the lands were acquired. The costs of lands acquired in other years for each county will be similarly adjusted and added to obtain the total adjusted cost for land in each county of the refuge. The base period is changed from time to time so care should be taken that all index figures used are related to the same base period."[20]

It is worthy of note that these are the same techniques as were originally proposed by the Secretary of the Interior.[21]

---

[18] 50 C.F.R. § 34.5 (b) (1967).

[19] 50 C.F.R. § 34.5 (a) (1967).

[20] § 781.5 Realty Manual, Bureau of Sport Fisheries and Wildlife, (1966).

[21] S. Rep. No. 1096, 88th Cong., 2d Sess. 22 (1964).

When an area consists of both acquired land and public domain, the regulation provides that standard accounting techniques will be used to allocate net receipts. [22] The regulations also provide that all areas which are a part of the system as of June 30 of the year will be included in calculating revenues due to each county for the fiscal year ending that date. [23] If the payment to the counties for any fiscal year would exceed the net receipts for that fiscal year then the payments to each county are reduced proportionately, [24] and when a refuge is situated in more than one county, the distributive share to each county is proportional to its acreage.

The payments to the counties are made after the end of the fiscal year or as soon as practicable, usually around November. The payments are made by checks drawn on the Treasury account by the Bureau, and are hand delivered to the appropriate county official. [25] The payments may be used by the counties only for the benefit of the public schools and roads of the county. [26] There are no post payment audits made of the use of the funds. [27]

If there are any funds left in the refuge receipts account after the counties have been paid, they may be used by the Secretary of the Interior for the management of the system, including the construction of roads, buildings and other facilities in the refuges. [28]

---

[22] 50 C.F.R. § 34.6 (1967).

[23] *Ibid.*

[24] 50 C.F.R. § 34.7 (1967).

[25] Interview with Mr. Claudie F. Denton, Program Analyst, Division of Wildlife Refuges, Bureau of Sport Fisheries and Wildlife Services, April 12, 1967.

[26] 16 U.S.C. § 715s (c) (1964).

[27] Denton interview *supra* note 25.

[28] 16 U.S.C. § 715s (d) (1964).

FEDERAL STATUTE DIGEST NO. LAC

Act of September 2, 1964 (Klamath Wildlife
Refuge Act) 78 Stat. 850, 851 (1964), 16
U.S.C. § 695m (1964).

I. Background

The Klamath Wildlife Refuge Act was intended to settle a long standing controversy concerning the use of certain Federal lands located in the Klamath Basin of northern California and Oregon.[1] These lands were originally acquired by the Federal government for use in connection with reclamation projects.[2] However, their use as a wildlife refuge became more important with the passage of time. The question of the use of these lands reached its conclusion with the enactment of the Klamath Wildlife Refuge Act. The Congressional intent to reserve the disputed lands primarily for use as a wildlife refuge, can be seen in the following statement from the House Report on the legislation:

> "The purpose of this legislation is... to achieve an equitable solution to a land utilization problem ... by stabilizing the ownership of land in the Klamath reclamation project and by providing permanency to the operations of the four national wildlife refuges in the Klamath Basin area of California and Oregon....
>
> "...S. 793 sets aside some 20,000 acres of public lands within the Executive order boundaries of the Tule Lake and lower Klamath Wildlife Refuges for the major purpose of waterfowl management, and by doing so settle a long standing controversy as to whether these lands should be homesteaded.... Enactment of this legislation will preserve waterfowl resources of the Pacific Flyway, prevent crop depredations in the Central and Imperial Valleys of California and aid the economy of the local people."[3]

The act contains a provision for revenue sharing which provides that twenty-five per cent of the net revenues collected from leasing of Klamath reclamation project reserved Federal lands within the Executive order boundaries of the Lower Klamath and Tule Lake refuges shall be paid to the counties in which these refuges are located.[4] These lease revenue payments are in addition to any revenues that are paid to the counties under the Migratory Bird Act.[5]

---

[1] H.R. Rep. No. 1072 88th Cong., 1st Sess. (1964).
[2] Id. at 5.
[3] Id. at 3.
[4] 16 U.S.C. § 695m (1964).
[5] 16 U.S.C. § 715s (1964). For discussion of the Migratory Bird Act see Digest LAB.

II. Provision for Payments and its Administration

A. Pertinent text of the statute

16 U.S.C. § 695m (1964) provides as follows:

> "Subject to conditions hereafter prescribed, and pursuant to such regulations as may be issued by the Secretary, 25 per centum of the net revenues collected during each fiscal year from the leasing of Klamath project reserved Federal lands within the Executive order boundaries of the Lower Klamath National Wildlife Refuge and the Tule Lake National Wildlife Refuge shall be paid annually by the Secretary, without further authorization, for each full fiscal year after September 2, 1964 to the counties in which such refuges are located, such payments to be made on a pro rata basis to each county based upon the refuge acreage in each county: Provided, That the total annual payment per acre to each county shall not exceed 50 per centum of the average per acre tax levied on similar lands in private ownership in each county, as determined by the Secretary: Provided further, That no such payments shall be made which will reduce the credits or the payments to be made pursuant to contractual obligations of the United States with the Tule Lake Irrigation District or the payments to the Klamath Drainage District as full reimbursement for the construction of irrigation facilities within said district, and that the priority of use of the total net revenues collected from the leasing of the lands described in this section shall be (1) to credit or pay from such revenues to the Tule Lake Irrigation District the amounts already committed to such payment or credit; (2) to pay from such revenues to the Klamath Drainage District the sum of $197,315; and (3) to pay from such revenues to the counties the amounts prescribed by this section."

B. Congressional rationale for payments

While the legislative history of the act contains no statement on the rationale for making the payment, it does indicate that Congress was aware that, to a limited extent, there would be dual payments made with respect to certain of the reserved Federal lands. Thus, it was stated in the House Report on the legislation:

> "Section 4 of the bill provides for the payment of a portion, not to exceed 25 per cent, of the net revenues collected from the leasing of lands within the Executive order boundaries of the Lower Klamath and Tule Lake refuge to the counties in which these refuges are located. ... These lease revenues to the counties are in addition to any revenues that are presently collected by the U. S. Fish and Wildlife Service of this department from those areas within the project that are administered by that agency. "6/

C. Administration

The statute is administered by the Bureau of Reclamation which has issued no regulations dealing with the administration of the revenue sharing provision. All information contained herein on the administration of the statute was obtained by interview of appropriate personnel of the Bureau of Reclamation.

6/ H.R. Rep. No. 1072, 88th Cong., 1st Sess. 11 (1964).

D. Lands for which payments are made

The statute authorizes payments with respect to reserved Federal lands within Executive Order boundaries of the Lower Klamath National Wildlife Refuge and the Tule Lake National Wildlife Refuge.

E. Recipients of payments and restrictions on their use

There are three counties which receive payments under the provisions of the statute.

A. Klamath County, Oregon

B. Modoc County, California

C. Siskiyou County, California

The counties may only use the funds for the benefit of the public schools and roads in the county. There is no audit made by the Bureau of the use to which the payments received are actually put.

F. Calculation of payments

The statute[7] provides that twenty-five per cent of the net revenues collected during each fiscal year from the leasing of Klamath reclamation project reserved Federal lands within the Executive order boundaries of the Lower Klamath National Wildlife Refuge and the Tule Lake National Wildlife Refuge shall be paid annually by the Secretary of the Interior for each full fiscal year to the counties in which such lands are located. The payments are to be paid on a pro rata basis depending upon the refuge acreage in each county, and provided that the total annual payment per acre shall not exceed fifty per cent of the average per acre tax levied on similar lands in private ownership in the county as determined by the Secretary.

While these wildlife refuges are to be administered in a manner which is consistent with proper waterfowl management,[8] the leases for these lands are to be at prices which are designed to obtain the maximum lease revenues.[9] These leases are for agricultural purposes, including the growing of grain, forage and soil building crops, except that not more than twenty-five per cent of the total leased lands can be planted in row crops.[10]

---

[7] 16 U.S.C. § 695m (1964).
[8] 16 U.S.C. § 695n (1964).
[9] Ibid.
[10] Ibid.

Proceeds are collected by the district offices and deposited in an account with the U.S. Treasury. The district office will then determine the amount of payment to which the counties are entitled based on net proceeds collected. Net proceeds means the gross receipts less those costs incurred incidental to the collection. [11]

The statute[12] also provides that before payments are made to the counties, the proceeds must be used to pay the contractual obligations of the United States with respect to the Tule Lake Irrigation District and payments due to the Klamath Drainage District.[13] Actual payments to the counties are made by check sent from the Treasury upon receipt of a payment voucher from the Bureau. In actual practice the counties have never received the full twenty-five per cent of net receipts because the taxes collected from similarly situated lands in private ownership are such that the statutory limitation on the twenty-five per cent formula becomes applicable. Payments are made at the end of the fiscal year or as soon thereafter as practicable, usually around September.

---

[11] Interview with Charles H. Taylor, Systems Accountant, Bureau of Reclamation, April 15, 1968.

[12] 16 U.S.C. § 695n (1964).

[13] Ibid.

FEDERAL STATUTE DIGEST NO. LAD

Statutes Authorizing the Taxation of Real Property Held by Federal Monetary Agencies.

The various Federal laws providing for revenue sharing or payments to be made in lieu of taxes to local units of government because of the presence of tax exempt Federal property within such local units of governments exhibit remarkable diversity. In one area, however, the Congressional treatment of the problem of shared revenues has been remarkably constant. For over one hundred years the Congress has provided that the real property of Federal monetary agencies shall be subject to State and local taxation. Indications are that this treatment, which differs from other statutory provisions dealing with similar situations, may have been due to a desire on the part of Congress to grant some financial assistance to local communities because of the large amount of property of the Federal monetary agencies (stocks, bonds, and other intangible property) which is not subject to local taxation.[1]

Below is a listing of the monetary agencies to which this policy has been applied:

National Bank System	13 Stat. 99 (1864)
Federal Reserve System	38 Stat. 251 (1913)
Federal Land Bank System	39 Stat. 260 (1916)
Federal Home Loan Bank System	47 Stat. 725 (1932)
Reconstruction Finance Corporation	47 Stat. 5 (1932)
Federal Deposit Insurance Corporation	48 Stat. 162 (1933)
Federal Savings and Loan Insurance	48 Stat. 1246 (1934)
Commodity Credit Corporation	52 Stat. 107 (1938)
Housing and Home Finance Agency	55 Stat. 364 (1941)
Veterans' Administration[2]	58 Stat. 623 (1944)

The statutory provision compensating local governments for the tax exempt status of land held by Federal monetary agencies is virtually uniform. The legislative histories of each of the statutes, including applicable hearings, reports and debates, were examined. No specific reasons for the adoption of the policy of allowing local entities to tax Federal property in these instances were found during the course of the examination. The Congressional materials contained nothing other than a recitation of the provisions as they were introduced.

---

[1] See e.g., CONG. GLOBE, 38 Cong., 1st Sess. 1865-71 (1864); 50 Cong. Rec. 4993-996 (1913).

[2] The Veterans' Administration is included in the term Federal monetary agencies because the only lands covered by its provisions are those acquired by the foreclosure of loans.

Below are excerpts from the statutes applicable to each agency:

National Bank System: 12 U.S.C. § 548 (1964)

> "...Nothing herein shall be construed to exempt the real property of associations from taxation in any State or in any subdivision thereof, to the same extent, according to its value as other real property is taxed...."

National Reserve System: 12 U.S.C. § 531 (1964)

> "Federal reserve banks, including the capital stock and surplus therein and the income derived therefrom, shall be exempt from Federal, State, and local taxation, except taxes upon real estate."

Federal Land Bank System: 12 U.S.C. § 933 (1964)

> "Nothing in sections 931-933 of this title shall be construed to exempt the real property of Federal and joint-stock land banks and Federal land bank associations from either State, county or municipal taxes, to the same extent, according to its value, as other real property is taxed."

Federal Home Loan Bank System: 12 U.S.C. § 1433 (1964)

> "...except that in any real property of the bank shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed."

Reconstruction Finance Corporation: 15 U.S.C. § 607 (1964)

> "...except that any real property of the Corporation shall be subject to special assessments for local improvements and shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed."

Federal Deposit Insurance Corporation: 12 U.S.C. § 1725(e) (1964)

> "...except that any real property of the Corporation shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed."

Federal Savings and Loan Insurance: 12 U.S.C. § 1825 (1964)

> "...any real property of the Corporation shall be subject to State, Territorial, county, municipal or local taxation to the same extent according to its value as other real property is taxed."

Commodity Credit Corporation: 15 U.S.C. § 713(a)(5) (1964)

> "...except that any real property of the Commodity Credit Corporation shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed."

Housing and Home Finance Agency: 12 U.S.C. § 1706(b) (1964)

> "Sec. 7. Nothing in this subchapter shall be construed to exempt any real property acquired and held by the Secretary in connection with the payment of insurance heretofore or hereafter granted under title from taxation by any State or political subdivision thereof, to the same extent, according to its value, as other real property is taxed."

Veterans' Administration: 38 U.S.C. § 1820(a)(6) (1964)

> "The acquisition of any...property [by the Veterans' Administration] shall not deprive any State or political subdivision thereof of its civil or criminal jurisdiction of, on, or over such property (including power to tax) or impair the rights under the State or local law of any persons on such property."

II. Description and Analysis of State Revenue Sharing and Payment in Lieu of Tax Statutes: Comparison with U.S. Laws

A. Introduction

The Federal Government and the several States are America's largest landowners.[1] Under the United States Constitution no State or political subdivision may tax Federal property without Congressional approval. [2] Most State constitutions contain similar provisions covering both State and Federal land. [3] Since local communities usually base their financial structure on real estate taxes, the exclusion of publicly held lands (both State and Federal) from local tax rolls may impose a considerable financial burden on local communities. A wide variety of methods have been utilized on both the State and Federal levels to alleviate this burden. The primary concern of this report is an examination of the Federal statutes providing financial assistance to local governments because of the burdens imposed by Federally-owned lands. The several States, however, have also enacted an extensive body of laws relating to revenue aids to be provided to local communities with respect to State publicly owned lands which often differ markedly from the Federal statutes dealing with the same problem.

This section of the report offers a preliminary study of the State statutes providing for financial assistance to local units of government with respect to State publicly owned land.

B. State Means of Compensating Local Governments to State Owned Lands

At least thirty-five States have enacted legislation specifically dealing with payments to be made to local governments on account of State owned, tax exempt land. Figure 1 following page LAE-16 presents in tabular form the various arrangements believed to be in use. An examination of Figure 1 reveals that three general approaches have been adopted by the

---

[1] The States own collectively some 84,750,000 of rural land or approximately 3.7% of the total land area of the country. (Tables No. A1 and A1B). Including highway rights-of-way the States own approximately 100,000,000 acres of land or 4.5% of the land area. Statistical Abstract of the United States, 1967 p. 202. The State acreage is about one eighth of the Federal government's holdings of 766,000,000 acres. Public Land Statistics 1966, p. 1.

[2] McCulloch v. Maryland 17 U.S. (4 Wheat) 316 (1817).

[3] See Chapter X , Part 3, for a fuller discussion of this subject.

States. These approaches are basically the same three employed by the Federal Government and may be summarized as follows:

(1) permitting local taxation of State owned property;

(2) making payments in lieu of taxes either equal to the local taxes payable on similar situated private property or on some other basis; and

(3) State sharing of revenues realized from State owned lands with local units of government.

C. Local Taxation of State Owned Land

A few States have permitted local communities to directly tax State owned lands. Although no State has apparently granted "blanket" authority in this respect, Florida, Idaho, Massachusetts, Michigan, New Jersey, New York, North Dakota, Oregon, South Dakota, Texas, Vermont and Wisconsin have authorized local taxation on various types of State owned lands.

New Jersey: New Jersey law[4] provides that all property to which the State has legal title is subject to local taxation. State parks, forests and highways, however, are not included in this provision. Furthermore, in order for the provision to become operative, more than nine per cent of the land area (excluding State forests, parks and highways) of the local government seeking to levy the tax must be State owned. No restrictions are imposed on the uses that may be made by the local community of the taxes thus collected, however, once the nine per cent threshold has been met. In this case, the principle of permitting local taxation of State real property may be considerably undermined by the conditions under which such local taxation is permitted. Considering the highly urbanized character of the State, the exclusion of State forests and parks from local taxation may not prove as financially burdensome to local communities as it would be in a more rural State where the area of State parks and forest lands is significantly greater.

Moreover, New Jersey also makes several individual payments in lieu of taxes. These involve the Found Valley and Spruce Run Reservations,[5] the New York Port Authority,[6] the Delaware River Commission,[7] and the Palisades Interstate Park Commission[8]. Each applies a different formula. Thus, any municipality in which land was acquired for the two reservations receives a two part payment, consisting of an amount equal to the taxes last paid on the land and the taxes last paid on improvements. That part of the payments relating to improvements is reduced by eight per cent every year from 1958 for thirteen years after which it is eliminated. Again, the New York Port Authority is authorized to enter into agreements with municipalities for payments in lieu of taxes up to the amount of taxes last paid on the lands it has acquired. Similarly, the Delaware River Commission may enter into agreements for payments in lieu of taxes with any municipality where it has acquired land since 1950 for non-transportation purposes. Finally, any municipality in which the Palisades Interstate Park Commission has acquired more than ten per cent of the municipality is entitled to a tax equivalence payment.

---

[4] N.J. Stat. Ann. Tit. 54 § 4-21 (1952).

[5] N.J. Stat. Ann. Tit. 58 § 20-5, § 21-6 (1952).

[6] N.J. Stat. Ann. Tit. 32 § 1-144 (1952).

[7] N.J. Stat. Ann. Tit. 32 § 3-12 (1952).

[8] N.J. Stat. Ann. Tit. 54 §§ 4A-4, 4A-5 (1952).

Vermont: While New Jersey permits local taxation of all but State owned forests and parks, the local communities in Vermont may tax only State forests, parks and game refuges. 9/ There is no restriction on the use of tax revenues, but State land may not be assessed at more than three dollars an acre. The selection of this approach is probably influenced by Vermont's rural character, just as the New Jersey statute seems to reflect its more urban, industrialized nature.

New York: New York applies a more sophisticated approach explicitly recognizing the difference between rural and urban communities. Thus, with respect to urban communities, i.e., cities of seventy-five thousand inhabitants or more, the State makes payments in lieu of taxes equal to one per cent of the acquisition, improvement and construction costs on lands acquired by the State provided the State owns property representing at least twenty-five per cent of the assessed valuation of all property in the city. 10/ On the other hand, New York permits certain local communities, predominantly rural in character, to tax all State lands, usually State forests, parks or game preserve lands. In some cases the taxing jurisdiction must use the money received for school purposes, 11/ while in other cases, no restrictions are placed on the use of taxes thus collected. 12/ This type of approach allows the legislature to make a case by case decision on what restrictions, if any, would be most beneficial to a particular county.

Florida and Idaho: While Florida 13/ and Idaho 14/ laws allow local governments to tax all State land, they require that the tax so levied be used for physical improvement of the land taxed and that the controlling agency or department give its approval. The effect of these statutes appears to be that the State rather than the local communities receives the benefit of the limited power of taxation of State lands granted to the local governments.

9/ Vt. Stat. Ann. Tit. 32 § 3656 (1959).
10/ N.Y. Pub. L.L. § 19-a.
11/ N.Y.R. Prop. § 536.
12/ N.Y.R. Prop. § 532.
13/ Fla. Stat. Ann. Tit. 192 § 08 (1943).
14/ Idaho Code Tit. 58 § 336 (1948).

Massachusetts, Texas and Michigan: Other States have similar provisions permitting limited local taxation of State property, but provisions allowing such are generally secondary to the revenue sharing and/or in lieu of tax provisions. For example, in Texas only the State prison farm [15] and University of Texas lands [16] are subject to local taxation, while all State lands utilized by public electrical utilities receive payments in lieu of taxes. [17] Massachusetts is an even more obvious example. While Commonwealth waterfront property and Commonwealth lands leased to private individuals are subject to all local taxation, [18] virtually all other Commonwealth land is subject to payment in lieu of tax statutes. [19] The State lands subject to local taxation in Michigan include only those under the control of the Department of Conservation, south of township 16 north and in Huron County, and licensed homesteads. [20] On the other hand, payments in lieu of taxes are made with respect to lands under the Department of Conservation, all State swampland [21] and State military board lands. [22]

Wisconsin and South Dakota, Oregon and North Dakota: Some States are even more restrictive in their policies permitting local taxation of State owned lands. Thus, Wisconsin permits local taxation of State owned land only if the land is residential property used by educational institutions.[23] In South Dakota, the local governments may only tax lands acquired under a rural credit act, [24] while in Oregon [25] and North Dakota [26] only State lands held under contract to purchase may be locally taxed.

Federal Provisions: To a limited extent the Federal government also permits federally owned land to be taxed by local governments. However, the Federal laws do not contain the restrictions imposed by some of the States. Thus, under the Federal laws, local units of government are permitted to tax the real property of certain government agencies at the same rate and using the same system of assessments used on similarly situated private lands. Minimum assessments, acreage thresholds and preferential treatment of specific local units to the exclusion of others are not found in the Federal legislation in this area.[26a]

---

[15] Tex. Civil Stat. Tit. 122 Art. 7150(4) (1964).

[16] Tex. Civil Stat. Tit. 122 Art. 7150c (1964).

[17] Tex. Civil Stat. Tit. 122 Art. 7150(4a) (1964).

[18] Mass. Gen. Laws Ann. ch. 59 § 5 (1959).

[19] Mass. Gen. Laws Ann. ch. 58 § 13 (1959).

[20] Mich. Stat. Ann. Tit. 7 §§ 711-3 (1958).

[21] Mich. Stat. Ann. Tit. 7 § 871 (1958).

[22] Mich. Stat. Ann. Tit. 7 § 786 (1958).

[23] Wisc. Stat. Ann. Tit. 70 § 114 (1957).

[24] S.D. Code Tit. 45 § 0203(7) (1939).

[25] Ore. Rev. Stat. Tit. 110s 201 (1953).

[26] N.D. Code Tit. 57 § 02-08 (1960).

[26a] See Digest LAD, Part 1 of Appendix No. 1, for a brief discussion of Federal laws permitting local taxation of the real property held by the various Federal monetary agencies.

A comparison of the various Federal and State practices permitting local taxation of publicly held land is given below:

State Public Lands Subject to Local Taxation

State	Land Covered
Florida	All State land where the tax is used to improve the land.
Idaho	All State land where the tax is a special assessment to benefit the State property.
Michigan	State land south of township 16 north and in Huron County controlled by Department of Conservation.
Mass.	State waterfront property and land leased to private individuals.
New Jersey	All State land but State parks, forests and highways, where municipality is more than 9% state owned.
New York	Certain local units may tax all State lands which are generally forests, parks or game refuge.
North Dakota	State lands under contract to purchase.
Oregon	State lands under contract to purchase.
South Dakota	Lands acquired under a rural credit act.
Texas	State prison farmlands and lands of the University of Texas.
Vermont	All State forest, parks and game reserves.
Wisconsin	Residential property of state educational institutions.
United States	Real estate of certain Federal monetary agencies.

D. State Payments in Lieu of Taxes to Local Communities

In general the states, like the Federal Government, have not favored extensive local taxation of public lands. The usual approach adopted by the States and the Federal Government is to provide for a sharing of revenue with the local units of government and/or authorize payments in lieu of taxes. There are a number of State variations to the payment in lieu of tax approach.

1. Payments Based on the Amount of Land in the Community

Georgia, Montana, New York: Some States make in lieu of tax payments only if the State owns a certain amount of land in the local community. Thus, Georgia requires that there be twenty thousand acres of

State owned property within a county before any in lieu of tax payment is made, 27/ and Montana has a requirement that six per cent of the land within the county be State owned. 28/ Montana, unlike Georgia, restricts the use of these payments to county schools and roads. The Montana statute also relates the amount of payment to the type of State land involved. Thus, payments are authorized of not more than twelve cents per acre for State forest and grazing land, while a thirty-five cent limit is imposed for State owned agricultural lands. This type of statute represents a definite attempt to relate the in lieu of tax payments to the taxable value of the land. In New York, 29/ the requirement is that twenty-five per cent or more of the land within the taxing jurisdiction must be State owned. This limitation applies, however, only to cities of seventy-five thousand inhabitants or more. Once these qualifications have been satisfied, the city is paid one per cent of the acquisition, improvement and construction costs on State acquired lands within the city's limits.

Minnesota: A further variation to this approach is illustrated in Minnesota 30/ where payments of ten cents an acre are made to school districts if (1) eighty-five per cent or more of the land within the district is State property; (2) fifty per cent or more of the land within the district is State property and there are thirty or more townships in the district; or (3) forty per cent of the district is State owned and the assessed valuation in the district is less than thirteen hundred dollars per pupil.

The common denominator of all these approaches is that they appear to represent an attempt to relate the making of in lieu tax payments to the burdens which State ownership of land imposes on local communities. The question of the effectiveness of the statutory guidelines can only be determined by an investigation of the actual operation of the laws involved.

2. Payments Relating to Specific Types of Land

Some States limit in lieu of tax payments to certain types of land. Thus in Arkansas, California, Connecticut, Michigan, Missouri, New Hampshire, North Dakota, Oregon, Pennsylvania and Washington payments are made with respect to State forest lands, or land acquired for fish and game purposes. The Arkansas statute 31/ is somewhat distinctive in that it authorizes either revenue sharing or payments in lieu of taxes to the counties, whichever is greater. This provision is similar to the Federal statute relating to wildlife refuges on lands acquired under the Migratory Bird Act. Under the Federal statute counties receive either twenty-five per cent of net revenues or three fourths of one per cent of the appraised value of the land, whichever is greater. By using this type of system the

---

27/ Ga. Code Ann. ch 93 §§ 93-319 (1960).
28/ Mont. Rev. Code Tit. 81 §§ 1115-1120 (1959).
29/ See text accompanying note 10 above.
30/ Minn. Stat. Ann. ch. 124 § 30 (1966).
31/ Ark. Stat. Ann. Tit. 9 § 724 (1947).

State is able to assure its political subdivisions of a minimum payment every year, which a straight revenue sharing provision could not.

New Hampshire: The New Hampshire procedure [32] takes one of two forms depending upon whether the State has levied any property taxes or not. If there are State property taxes then the town, which is required to pay these, is permitted to abate the amount payable to the State up to an amount equal to one-half the amount of taxes which would have been due the town on State and National Forests had they been taxable. If there are no State property taxes, and currently there are none, then the towns receive a payment equal to the amount of taxes they would have received from the State and National Forests within their boundaries had they been taxable. This payment is reduced by the amount which the town has received from collection of the State severance tax. [33] New Hampshire also makes payments for five years to the towns with respect to any lands the State acquires for State recreational or park purposes. [34] The town of origin receives a tax equivalent payment in the year of acquisition. Every year thereafter the payment is decreased by twenty per cent until after five years the payments cease.

New Hampshire's use of a declining percentage of payments is analogous to one found in the Federal statute providing for the in lieu of tax payments to be made to Teton County, Wyoming. [35] This particular Federal statute and the New Hampshire law are believed to be the only laws of this type. They both, in effect, have adopted an approach of "weaning" the local unit of government from intergovernmental financial assistance.

The State statutes limiting payments in lieu of taxes to certain types of land may be summarized as follows:

State	Type of Land
California	Land acquired for State forests.[36]
Connecticut	State forest, game preserves, prisons, hospitals, military, flood control and University land. [37]
Florida	State prison farm lands in Bradford County. [38]
Illinois	All State lands where the State owns more than 1/8 of the acreage in the school district. [39]

---

[32] N.H. Rev. Stat. Ann. ch. 219 § 32 (1955).
[33] N.H. Rev. Stat. Ann. ch. 79 § 3413 (1955).
[34] N.H. Rev. Stat. Ann. ch. 216 § A14 (1955).
[35] 16 U.S.C. § 406d-1 (1964); (Digest LU).
[36] Cal. For. Code § 34433.
[37] Gen. Stat. of Conn. Tit. 12 §§ 12-18 - 12-24 (1958).
[38] Fla. Stat. Ann. Tit. 192 § 10 (1943).
[39] Ill. Rev. Stat. ch. 122 § 18-4 (1965).

Iowa	State owned unplatted school lands.[40]
Massachusetts	All State land.[41]
New Hampshire	State and National Forests lands.[42]
Pennsylvania	State land acquired for recreation, conservation or flood control purposes.[43]
South Dakota	State tax exempt school lands, lands under the Board of Charities and Corrections.[44]
Texas	Lands held by State created electrical utility.[45]
Washington	Game lands of over 100 acres where the county elects a tax equivalence rather than to receive the fines collected.[46]

3. Flat Sum Payments

State laws providing for flat sum payments are far more common than in Federal legislation.[47] The State provisions are of two types: (1) those relating to entire projects; and (2) those providing for fixed sums to be paid on a per acre basis. The Federal and State provisions of this type may be summarized as follows:

Federal	$300,000 each to Arizona and Nevada for the Boulder Canyon Project.
Michigan	10¢ per acre on lands under the State Military Board.[48] 20¢ per acre on State swamp and conservation lands.[49]
Missouri	15¢ per acre on State Forest croplands.[50]
Pennsylvania	20¢ per acre on State forest croplands.[51]
Wisconsin	30¢ per acre on State forest and game preserves.[52]

---

[40] Iowa Code Ann. Ch. 284 § 1-4 (1946).
[41] Mass. Gen. Laws Ann. ch. 58 § 13 (1959).
[42] N.H. Rev. Stat. Ann. ch. 219 § 32 (1955).
[43] Pa. Stat. Ann. Tit. 24 § 6-604 (1959).
[44] S.D. Code Tit. 45 § 0203(7) (1939).
[45] Tex. Civil Stat. Tit. 122 art. 7150(4a) (1964).
[46] Rev. Code of Wash. Ann. Tit. 77 §§ 12.201 and 12.203 (1961).
[47] Only one Federal statute provides for a fix sum payment, the Boulder Canyon Legislation, under which Arizona & Nevada are each paid $300,000 annually. 43 U.S.C. § 617 (1964) (Digest LH).
[48] Mich. Stat. Ann. Tit. 7 § 786 (1958).
[49] Mich. Stat. Ann. Tit. 7 § 871 (1958).
[50] Mo. Rev. Stat. ch 254 §§ 070-110 (1959).
[51] Pa. Stat. Ann. Tit. 72 § 4303 (1959).
[52] Wisc. Stat. Ann. Tit. 70 § 113 (1957).

Connecticut	Flat project and/or per acre payments on State airports and beaches varying from town to town.[53]
Minnesota	25¢ an acre or 35% of revenues on fish and game lands whichever is greater.[54]

4. State and Federal Payment in Lieu of Tax Provisions Containing Fixed Formulas

Another type of payment in lieu of tax provision which has been enacted by both the Federal and State Governments are those which contain definite formulas under which the amount of the payments are to be calculated. At the Federal level the Superior National Forest Provision (Digest LS), the Trinity River Act (Digest LY), TVA legislation (Digest LI), and the migratory Bird legislation as applied to acquired lands (Digest LAB), all fall within this category. On the State level, New York, California, Ohio, South Carolina and Connecticut have adopted this kind of a system in various forms. The following table provides a limited comparison of these laws:

Federal	Payment Basis
Migratory Bird Lands	3/4 of 1% of appraised value as readjusted.[55]
Superior National Forest	3/4 of 1% of the appraised value.[56]
Trinity River	Equal to current tax rate of assessed valuation when removed from the tax rolls.[57]
TVA	Equal to two year average of taxes on lands when removed from tax rolls.[58]

State	Payment Basis
California	Tax equivalent for the year of acquisition on income producing wildlife lands acquired after 1949.[59]
New York	1% of the acquisition and improvement costs of certain lands in cities over 75,000.[60]
Ohio	1% of the value at acquisition of lands held by the Wildlife Division.[61]

---

[53] Gen. Stat. of Conn. Tit. 12 § 12-18 - 12-24 (1958).
[54] Minn. Stat. Ann. ch. 97 § 49 (1966).
[55] 16 U.S.C. § 715s (1964).
[56] 16 U.S.C. § 577g (1964).
[57] 69 Stat. 719 (1955).
[58] 16. U.S.C. § 831 (1964).
[59] Cal. Fish & Game Code § 1504.
[60] N.Y. Pub. L.L. § 19a.
[61] Ohio Rev. Code Ann. Tit. 1531 § 27 (1964).

State	Payment Basis
South Carolina	Equal to the 1964 payment after the State is paid $225,000 and expenses are paid.[62]
Connecticut	Tax equivalent with a maximum assessment of $500 per acre.[63]

E. State Revenue Sharing Provisions - Comparison with Federal Statutes

1. General

The last and apparently the oldest method by which the various states have chosen to compensate local communities for loss of revenue caused by tax exempt State lands is through revenue sharing. This method is employed in one form or another in several States and is sometimes used in conjunction with one of the types of in lieu laws discussed above.

2. State Forest, Park and Game Preserves

Revenues from State forests, parks and game preserves are distributed most often. In Idaho, North Dakota, Minnesota, Montana and Washington, fifty per cent of the revenue realized from State forests is to be returned to the counties or school districts.

In other States, the provisions are roughly the same but the percentages vary from fifteen per cent (Indiana, Maryland and North Carolina) to seventy-five per cent (Oregon).

3. Federal Forests

There are three Federal statutes which contain revenue sharing provisions for forest lands. They are the Arizona and New Mexico Enabling Acts,[64] the twenty-five per cent statute relating to National Forests,[65] and the seventy-five per cent O&C Revestment Act revenue sharing provisions.[66] The first two require that the moneys received be used for public schools and/or roads. The restriction placed on the O&C funds is that one third of the receipts payable be used to reimburse the Federal Government for the construction of access roads. None of the States has any restrictions on the use of revenues other than for school purposes and more than half of them do not even impose this restriction.

---

[62] Code of Laws of S.C. ch. 59 § 8.1 (1962).
[63] Gen. Stat. of Conn. Tit. 12 §§ 12-18 - 12-24 (1958).
[64] 36 Stat. 557 (1910); (Digest LC).
[65] 16 U.S.C. § 500 (1964); (Digest LB).
[66] 43 U.S.C. § 1181f-j (1964); (Digest LD).

Summary of Revenues Shared from State and Federal Forests

State	Percentage
Arkansas	25% net income or payment in lieu of taxes whichever is greater.[67]
Colorado	25% of gross revenues.[68]
Idaho	50% of net profits derived from State parks and forests.[69]
Indiana	15% of net receipts from leases and contracts in State forests.[70]
Maryland	15% of the revenue derived from State forest reserves.[71]
Minnesota	50% of gross receipts from state forests.[72]
Mississippi	25% of gross revenues from State parks and forests.[73]
Montana	50% of net profits from the administration of lands acquired for forest purposes.[74]
New Hampshire	10% of the gross stumpage value of timber cut.[75]
North Carolina	15% of the gross receipts from the sale of products on State timber lands [76] (50% of the net profits from the administration of State forest lands acquired without cost to the State).[77]
North Dakota	50% of net profits from the administration acquired for forest purposes.[78]

---

[67] Ark. Stat. Ann. Tit. 9 § 724 (1947).
[68] Colo. Rev. Stat. Tit. 112 § 7-11 (1963).
[69] Idaho Code Tit. 58 § 503 (1948).
[70] Ind. Stat. Ann. ch. 32 § 411 (1956).
[71] Ann. Code of Md. Art. 66 § 357 (1957).
[72] Minn. Stat. Ann. ch. 89 § 36 (1966).
[73] Miss. Code Ann. ch. 6 § 6038 (1942).
[74] Mont. Rev. Code Tit. 81 § 1105 (1959).
[75] N.H. Rev. Stat. Ann. Tit. 79 §§ 3,13 (1955).
[76] Gen. Stat. of N.C. ch. 105 § 296.1 (1964).
[77] Gen. Stat. of N.C. ch. 113 § 42 (1964).
[78] N.D. Code Tit. 4, § 19-08 (1960).

Ohio	25% of the net value of products sold and royalties.[79]
Oregon	75% of gross receipts after deduction of 10% of revenues on lands acquired without cost to the state.[80]
South Carolina	50% of net profits on lands owned by Commission of Forestry [81] (25% of the gross receipts from sale of products & services on lands managed by Commission of Forestry).[82]
Vermont	10% of the gross stumpage value of timber cut.[83]
Virginia	25% of gross revenues from the sale of permits on the State forests and wildlife refuges.[84]
Washington	50% of net revenues from the sale of timber products.[85]

Federal Statute	Percentage
National Forest Revenue	25% of gross revenues from the National Forests.[86]
Arizona & New Mexico Enabling Acts	% of gross National Forest revenue equal to the the number of school grant acres within the National Forest in the State times one hundred divided by the total National Forest acreage in the State.[87]
Oregon & California Revestment Act	75% of gross revenues from the O&C lands.[88]

---

[79] Ohio Rev. Code Ann. Tit. 1503 (1964).
[80] Ore. Rev. Stat. Tit. 53a §§ 110-120 (1953).
[81] Code of Laws of S.C. ch. 29 § 28 (1962).
[82] Code of Laws of S.C. ch. 29 § 29 (1962).
[83] Vt. Stat. Ann. ch. 30 § 3614 (1959).
[84] Code of Va. Tit. 10 § 73 (1950).
[85] Rev. Code of Wash. Ann. Tit. 76 § 12.120.
[86] 16 U.S.C. § 500 (1964); (Digest LB).
[87] 36 Stat. 557 (1910); (Digest LC).
[88] 43 U.S.C. §§ 1181f-j (1964); (Digest LD).

4. Other State Lands

A few States share the revenues realized from State lands other than forest lands. California shares twenty-four per cent of the rental received on lands acquired for highway purposes, and one per cent of the revenues derived from tidewater and submerged lands with the counties. In Iowa, fifty per cent of the revenues received from State lands acquired for conservation purposes are shared with the counties in which the lands are located.[89] Half the income produced by State owned conservation lands in Minnesota is returned to the county of origin.[90] The county pays thirty per cent of the money it receives to the county development fund, forty per cent to the capital outlay fund of the school district in which the lands are located, twenty per cent to the county revenue fund and the remaining ten per cent to the township road and bridge fund.

Nebraska has a revenue sharing provision [91] which provides that State-created electrical utilities shall distribute five per cent of their gross revenues among local units of government in proportion to their tax rates, while in Washington seventy-five per cent of the gross revenues from the leasing of harbor areas and tidewater lands are paid to the county of origin for harbor and water front improvements. [92]

Two States, Connecticut and Pennsylvania, have statutory counterparts to the Corps of Engineers' Flood Control Act.[93] The Federal law authorizes the payment of seventy-five per cent of the gross revenues produced on lands acquired for flood control purposes to the States. They must use these funds for the construction and maintenance of schools and roads. The two states have adopted tax equivalence payments on this type of land which are summarized supra, pp. LAE 7-8.

5. Other Federal Lands

While only a few States have used revenue sharing provisions on any type of land other than forest or game preserves, there are a number of revenue sharing provisions in Federal statutes dealing with other types of land. The State and Federal systems are the least similar in this area. The Mineral Leasing Act, [93a] Louisiana [94] and Minnesota [95] do overlap slightly. The Louisiana constitutional provision authorizes a payment of ten per cent of gross receipts from mineral leases on State land to the Royalty Road Fund for the credit of the parish of origin. The Minnesota statute is more generous since eighty per cent of the gross revenues is paid to the counties for distribution among the school districts, towns and county of origin. However, by and large, the States have virtually no counterparts to the revenue sharing provisions in the Federal Power Act,[96] the Taylor Grazing Act,[97] the Bankhead-Jones Act,[98] the Alaska Land Sales Act,[99] the State Indemnity Lands Act.[100]

---

[89] Iowa Code Ann. ch. 108 § 4 (1946).
[90] Minn. Stat. Ann. ch. 84a § 51 (1966).
[91] Rev. Stat. of Nebraska Const. Art. VIII, Sec. 11 (1943).
[92] Rev. Code of Wash. Ann. Tit. 79 § 16.180 (1961).
[93] 33 U.S.C. § 701c-3 (1964); (Digest LF).
[94] 30 U.S.C. § 191 (1964); (Digest LF).
[95] Minn. Stat. Ann. ch. 93 § 335 (1966).
[96] 16 U.S.C. § 810 (1964); (Digest LG).
[97] 43 U.S.C. § 315 (1964); (Digest LK).
[98] 77 U.S.C. § 1012 (1964); (Digest LM).

6. Discussion

As in the case at the Federal level, State revenue sharing is probably least related to the tax loss resulting from State tax exempt land. While the effectiveness of payment in lieu of taxes is usually considered in terms of the burden the State has imposed on the local government by exempting land from taxation, revenue sharing is much less closely related to the needs of the political subdivision. The difficulty with revenue sharing provisions is that payments are tied to the fluctuating revenues and, more importantly, is based on the premise that the lands to which they relate will in fact produce revenues. Thus, in times of economic stress when the importance of payments to the local communities is at its greatest, revenues are likely to be lowest. The Arkansas provision [101] seems to have taken this shortcoming into consideration by authorizing payments to the counties of origin of twenty-five per cent of State forest income or an amount equal to the average tax income from the State forest lands ten years before their acquisition.

One of the most sophisticated State statutes is found in Illinois[102] where the Board of Trustees of the University of Illinois is authorized to enter into agreements with local tax authorities for the payment of services rendered to the University by the local tax district on lands producing income. Wisconsin has a similar law [103] authorizing the State Conservation Commissioner to negotiate for the payment for services normally financed by a general property tax. This type of statute is an excellent example of relating payments to the actually determined needs of the local communities. Whether such an approach, granting wide discretionary powers to administrative agencies can be adopted on a statewide or national basis is a difficult question to answer. There are instances where authority has been granted to Federal agencies, to make adjustments in the payments made to local communities based on the burdens imposed on such local communities by the presence of Federally owned property, *e.g.*, the Atomic Energy Commission [104] and the St. Lawrence Seaway Corporation.[105] However, these agencies do not appear to have exercised this particular authority. Nevertheless, in spite of the political and practical obstacles to the adoption and operation of such a system, it at least deserves much further study and consideration.

Here, as in lands subject to taxation, the States, as well as the Federal Government, have shown preference for diversity. States having payment in lieu of tax provisions with respect to certain lands either allow other State lands to be locally taxed or provide for a sharing of the revenues realized from State lands with local units of government or both. Thus, in twenty-one States having legislation providing for payments in lieu of taxes in only seven is this the exclusive method adopted for financially assisting local units of government.

---

[99] 43 U.S.C. § 1421 (1964); (Digest LA).
[100] 43 U.S.C. § 853 (1964); (Digest LAA).
[101] Ark. Stat. Ann. Tit. 9 § 724 (1947).
[102] Ill. Rev. Stat. ch. 144 § 28-7.
[103] Wis. Stat. Ann. Tit. 70 § 118 (1957).
[104] 62 U.S.C. § 2208 (1964); (Digest LP).
[105] 33 U.S.C. § 981 (1964); (Digest LX).

F. Overview

In spite of the lack of information concerning State laws, a few general comments may be made:

1. There is no State "system" as such. The State laws are too numerous and exhibit such wide differences, albeit within a broad revenue sharing and payment in lieu of taxes framework, as to make overall comparisons impossible.

2. Despite the lack of State acreage data, there is no question but that the States own relatively little land, compared with the Federal Government. It is estimated that total State land holdings are not more than the five or six per cent of the land area of the United States. As such, any State system either cumulatively or on an individual State basis has much less impact and importance than the Federal system.

3. The State statutes suggest possible changes in Federal legislation. For example, none of the Federal statutes have an acreage limitation such as those found in Montana, New Jersey and New York. This type of qualification has obvious advantages. Payments are made only to those units upon which a real burden is imposed and nominal payments are eliminated.

Closely akin to this acreage threshold is the assessment limitation imposed by some of the States. Payments in lieu of taxes on Federal public lands are either based on the assessed value at the time of acquisition or the assessment procedures are in the hands of the Federal Government. The States, on the other hand, frequently rely on the local assessor's valuation and base their payments on current tax losses rather than loss at the time of acquisition. In order to prevent abuse, Connecticut and Vermont impose an assessment ceiling on the assessor's valuation. The State practices seem more closely in harmony with an attempt to compensate local government for their actual losses. However, this is only true as long as the assessment limitation does not unreasonably restrict the local assessor's discretion.

The State practice of making flat sum per acre payments is subject to the same criticism. These payments to local units of government have greater regularity than revenue sharing payments but the figure must be kept current in order to keep in step with local burdens. Because Federal payments are generally atoned for tax losses at acquisition and because of the difficulties of keeping the flat sum current, the practicality of this approach in the Federal system is questionable.

Perhaps the most apparent difference between the Federal and State laws is the area of recreation. The Federal Government makes no payments of any kind with regard to its National Park System (except with respect to Grand Teton National Park), while several of the States have provisions authorizing local taxation, payments in lieu of taxes or revenue sharing on their State parks. The feeling on the Federal level thus far has been that the stimulation a National Park gives to the local economy more than compensates local governments for the revenues they might otherwise realize. There is some indication that this attitude is changing, at least with reference to specific National Parks.106/ If and when this happens, State practices will become more significant as a source of models.

Finally, some of the States, *e.g.*, Connecticut and New York, have introduced another approach for eliminating actual burdens. They consider the local situation individually and make specific provisions tailored to the particular needs of the community due to State land ownership. The sheer size of the Federal land holdings may make their approach unpractical on the Federal level.

106/ Thus S. 1370, 90th Cong., 1st Sess. (1967), establishing Redwood National Park, contains a discretionary in lieu of tax provision.

State Statutes Providing For Payment In Lieu Of Taxes and/or Revenue Sharing On State Owned Lands.

(1) State	(2) Citation	(3) Types of lands to which the provisions apply	(4) Type of Statute	(5) Unit of government receiving payment [1]	(6) Description of RS or PILT Provision	(7) EBSMC PLLRC File #
Alabama	There are apparently no provisions for the distribution of state funds to its subdivisions for state land ownership.[2]					267
Alaska	There are apparently no provisions for the distribution of state funds to local units of government to compensate for state owned land.					268
Arizona	There are apparently no provisions for the distribution of state funds to the local entities for the state land ownership.					269
Arkansas	ARK. STAT. ANN. tit. 9 § 724 (1947)	State acquired forest lands	RS or PILT	Counties	25% of the net income from the state forest lands or an amount equal the average tax income for 10 years prior to state acquisition whichever is greater.	270
California	CAL. FISH & GAME CODE § 1504	Lands acquired after 1949 for wildlife management purposes which produce income	PILT	Counties	The Department of Fish & Game pays amount equal to the taxes levied on income producing wildlife lands the year of their acquisition.	271

[1] The units referred to are only those where the lands of column 3 are located and revenues shared are only those produced on those lands.
[2] Confirmed by state officials. See EBSMC PLLRC File # 268.

LAE-17

(1) State	(2) Citation	(3) Types of lands to which the provisions apply	(4) Type of Statute	(5) Unit of government receiving payment 3/	(6) Description of RS or PILT Provision	(7) EBSMC PLLRC File #
California	CAL. STR. & H. §§ 104.6 -.10	Lands acquired for highway purposes	RS	County	24% of the rentals on highway lands go to the county in which they are located and are divided among the tax districts in proportion to the district's assessed valuation on such lands	
	CAL. FOR. CODE § 4633	Land acquired for state forest purposes	PILT	County	The county is paid an amount equivalent to that levied on similarly situated land. Similarly situated land is determined by a committee consisting of the county assessor and a representative of the State Board of Equalization and one of the State Forester.	
	CAL. PUB. R. CODE § 6817	Tide and submerged land or state granted lands on which mineral rights were reserved	RS	City or County	1% goes to the city or county and must be used for commerce, navigation, fishing or beaches. The money must be used for recreational beaches & coastline. No city or county will receive more than $75,000 per mile on city or county park land leased by the State for production of oil and gas.	
Colorado	COLO. REV. STAT. ch. 112 art. 7 § 11 (1963)	State forest	RS	County school fund	25% of revenues realized by the state from the state forest.	272

3/ The units referred to are only those where the lands of column 3 are located and revenues shared are only those produced on those lands.

LAE-13

(1) State	(2) Citation	(3) Types of lands to which the provisions apply	(4) Type of Statute	(5) Unit of government receiving payment a/	(6) Description of RS or PILT Provision	(7) ERSMC PLLRC File #
Connecticut	GEN. STAT. OF CONN. tit 12 §§ 12-18-12-24 (1958)	Forest and game preserves, prisons, hospitals, military, flood control and University state land, airports and beaches	PILT	Towns	All towns receive a payment equal to the tax levied on similarly situated lands. In addition, certain specifically enumerated towns receive special payments for state airports and beaches. Lands acquired after 1929 shall not be assessed at more than $500 per acre. There are several individual provisions in these.	273
Delaware	There are no apparent provisions for the distribution of state funds for state land ownership to political subdivisions. b/					274
Florida	FLA. STAT. ANN. tit 192 §. 08 (1963)	All state lands	Subject to taxation	Any taxing district	State property is liable for any taxes levied to improve the actual physical condition of state land provided the agency or department in control approves.	274a
	FLA. STAT. ANN. tit. 192 § .10 (1963)	State prison farm lands in Bradford County with the exception of a 500 acre tract	PILT	County	The county is paid the same amount as it would receive were the lands privately owned.	
Georgia	GA. CODE ANN. ch. 92 §§ 3193-3196 (1960)	All state owned land	PILT	County	An amount equal to the tax levied on similarly situated land is paid by the State Forestry Department to every county in which there are more than 20,000 acres of tax free state land.	275

a/ The units referred to are only those where the lands of column 3 are located and revenues shared are only those produced on those lands.
b/ Confirmed by state officials. See ERSMC PLLRC File # 274.

(1) State	(2) Citation	(3) Types of lands to which the provisions apply	(4) Type of Statute	(5) Unit of government receiving payment 6/	(6) Description of RS or PILT Provision	(7) EBSMC PLLRC File #
Hawaii	There are apparently no statutes for the distribution of state funds to compensate local units for state land ownership.7/					276
Idaho	IDAHO CODE tit. 58 § 503 (1948)	Lands acquired by the state for parks or forests	RS	County	50% of the net profits derived from the land are paid to the county school fund.	277
	IDAHO CODE tit. 58 § 336 (1948)	All state lands	Subject to taxation	All taxing districts	All state lands may be assessed and charged for the costs of local benefits specifically benefiting such lands.	
Illinois	ILL. REV. STAT. ch. 144 § 28-7 (1965)	University of Illinois property used for income producing purposes or leased to staff members	PILT	Tax district	The Board of Trustees of the University are empowered to make payments for services performed by tax district.	278
	ILL. REV. STAT. ch. 122 § 18-4 (1965)	All state lands	PILT	School district	All school districts in which more than 1/8 of the land is state owned or in which more than 5% of the school population are state institution employee dependents (in a district at less than 250 pupils) receive tax equivalent payments.	

6/ The units referred to are only those where the lands of column 3 are located and revenues shared are only those produced on those lands.
7/ Confirmed by state officials. See EBSMC PLLRC File # 276.

LAE-20

LAE-21

(1) State	(2) Citation	(3) Types of lands to which the provisions apply	(4) Type of Statute	(5) Unit of government receiving payment 8/	(6) Description of RS or PILT Provision	(7) EBSMC PLLRC File #
Indiana	IND. STAT. ANN. ch. 32 § 411 (1956)	State forests	RS	County	15% of net receipts from the state forest are paid to the general fund of the county.	279
Iowa	IOWA CODE ANN. ch. 108 § .4 (1946)	Lands acquired under conservation act	RS	County school fund	50% of the net profits from lands acquired for conservation purposes.	280
	IOWA CODE ANN ch. 284 §§ .1-.4 (1946)	Unplatted school land	PILT	School district	Whenever the state or a foreign municipal corporation owns unplatted lands within a school district it reimburses the district for tax revenues lost.	
Kansas	There are apparently no provisions for the distribution of funds for state owned lands.9/					281
Kentucky	There are apparently no provisions for the distribution of funds for state owned lands.					282
Louisiana	LA. STAT. ANN. CONST. Art IV § 2 (1952)	All state owned lands containing mineral leases	RS	Parishes	10% of license fee from all mineral leases on land, lake, riverbed and other water bottoms owned by the State are paid into the Royalty Road Fund to the credit of the parish of origin	283

8/ The units referred to are only those where the lands of column 3 are located and revenues shared are only those produced on those lands.

9/ Confirmed by state officials. See EBSMC PLLRC File # 281.

(1) State	(2) Citation	(3) Types of lands to which the provisions apply	(4) Type of Statute	(5) Unit of government receiving payment 10/	(6) Description of RS or PILT Provision	(7) EBSMC PLLRC File #
Maine	There are apparently no statutes for the distribution of funds to compensate local units for state owned lands.11/					284
Maryland	ANN. CODE of MD. art. 66C § 357 (1957)	State forest, parks, scenic preserves, parkways and recreation area	RS	County	15% of the gross revenues realized from specified lands.	285
Massachusetts	MASS. GEN. LAWS ANN. ch. 58 § 13 (1959)	All state property12/	PILT	Towns	The state reimburses the town for tax losses incurred through the exemption from taxation of state property.	286
	MASS. GEN. LAWS ANN. ch. 59 § 5 (1959)	State waterfront land, forest & park lands leased by private persons	Subject to taxation	All taxing districts		
Michigan	MICH. STAT. ANN. tit. 4 § 786 (1958)	State lands controlled by the state military board	PILT	Township, village & city	10¢ an area is paid to townships, village and city containing lands owned and controlled by the state military board in proportion to their tax rate.	287

10/ The units referred to are only those where the lands of column 3 are located and revenues shared are only those produced on those lands.

11/ Confirmed by state officials. See EBSMC PLLRC File # 284.

12/ Lands include those used for fish hatcheries, game preserves, wildlife sanctuary, military camps, Soldiers' Homes, state forests, lands under the control of the Department of Correction, Department of Education, Department of Mental Health, Department of Public Welfare, Department of Natural Resources, or the Department of Public Works.

LAE-22

(1) State	(2) Citation	(3) Types of lands to which the provisions apply	(4) Type of Statute	(5) Unit of government receiving payment [13]	(6) Description of RS or PILT Provision	(7) EBSMC PLLRC File #
Michigan	MICH. STAT. ANN. tit. 7 §§ 711-3 (1958)	State lands controlled by the Department of Conservation south of township 16 north or in Huron County.	Subject to local taxes	All taxing authorities		
	MICH. STAT. ANN. tit. 7 § 871 (1958)	State tax homestead, state swamp lands & lands under Department of Conservation control.	PILT	County, townships & school districts	20¢ an acre is paid the counties and divided pro rata among the county, townships & school districts according to tax rates.	
	MICH. STAT. ANN. tit. 7 § 7 (1958)	Licensed homestead, part-paid and tax sale purchased lands.	Subject to taxation	All taxing authorities		
	MICH. STAT. ANN. tit. 7 § 188 (1958)	Lands sold by the Director of Conservation.	RS	County, township & school district	The proceeds from the sale of lands by the Director of Conservation are distributed to the state, county, township and school district pro rata according to their several interests arising from the non payment of taxes and special assessments.	
Minnesota	MINN. STAT. ANN. ch. 93 § 335 (1966)	Lands held in trust by the state for tax districts.	RS	Counties	80% of the gross revenues from the mineral leases on these lands is returned to the county to be distributed 3/9 to county, 2/9 to town and 4/9 to school district.	288
	MINN. STAT. ANN. ch. 124 § 30 (1966)	All state land	PILT	School district	Where 85% of the land is exempt, or 50% is exempt and the district has 30 townships or over, or where 40% is exempt and there is an assessed per pupil valuation of less than $1,300 annually, the school district receives a payment of 10¢ an acre on all state owned tax exempt land.	

[13] The units referred to are only those where the lands of column 3 are located and revenues shared are only those produced on those lands.

LAE-23

(1) State	(2) Citation	(3) Types of lands to which the provisions apply	(4) Type of Statute	(5) Unit of government receiving payment[14]	(6) Description of RS or PILT Provision	(7) EBSMC PLLRC File #
Minnesota	MINN. STAT. ANN. ch. 84A § 51 (1966)	Conservation lands	RS	County	50% of the income from Conservation lands are paid to the county of origin. The county in turn is required to pay 30% to the county development fund, 40% to the capital outlay fund of the school district of origin, 20% to the county revenue fund and 10% to the township road and bridge fund.	
	MINN. STAT. ANN. ch. 89 § 36 (1966)	State forest lands	RS	County	50% of the gross receipts are returned to the county of origin.	
	MINN. STAT. ANN. ch. 97 § 49 (1966)	State owned fish and game lands	RS or PILT	County	The state pays the county of origin 35% of gross revenues or 25¢ an acre whichever is greater on the state fish and game lands.	
	MINN. STAT. ANN. ch. 298 § 32 (1966)	All lands public and private	RS	County, town, & school district	50% of the occupation tax on mining of taconite and taconite concentrates is distributed as follows - 25% to the county, 25% to the town and 50% to the school district.	
Mississippi	MISS. CODE ANN. ch. 6 § 6038 (1942)	State parks and forests	RS	County school fund	25% of the gross revenues realized from state forest and park land.	289
Missouri	MO. REV. STAT. ch. 254 §§ .070-.110 (1959)	State forest cropland	PILT & subject to taxation	County	15¢ per acre is paid the county in which the lands are located. Moreover as long as the lands are classified as forest croplands they are subject to local taxation on an assessed valuation of $1 per acre.	290

[14] The units referred to are only those where the lands of column 3 are located and revenues shared are only those produced on those lands.

LAE-24

(1) State	(2) Citation	(3) Types of lands to which the provisions apply	(4) Type of Statute	(5) Unit of government receiving payment 15/	(6) Description of RS or PILT Provision	(7) EBSMC PLLRC File #
Montana	MONT. REV. CODE tit. 81 § 1105 (1959)	State acquired forest lands	RS	County school fund	50% of the net profits realized from state acquired forest lands.	291
	MONT. REV. CODE tit. 81 §§ 1115-1120 (1959)	All state land producing income	PILT	County	Counties in which the state owns more than 6% of the land and which produce grazing, agricultural or forest income receive equalization payments of not more than 12¢ an acre for forest and grazing land and 35¢ an acre for agricultural land. 60% of this is distributed to the elementary school districts and 40% to the county road fund.	
Nebraska	REV. STAT. of NEB. Const. Art. VIII § 11 (1943)	Tax exempt land held by electrical utilities	RS	State, county and school districts	State electrical utilities must pay an amount equal to 5% of their gross revenues less any PILTs made to the city or village. The payment is divided among the recipients according to their tax rates.	292
Nevada	No apparent provisions for the distribution of state funds for state owned land. 16/					293
New Hampshire	N.H. REV. STAT. ANN. ch. 216 § A:3-a(1955)	State acquired land for park or recreation	PILT	Towns	During the first 5 years after acquisition the State makes declining percentage payments of the tax levied on similar property.	294

15/ The units referred to are only those where the lands of column 3 are located and revenues shared are only those produced on those lands.

16/ Confirmed by state officials. See EBSMC PLLRC File # 293.

LAE-25

(1) State	(2) Citation	(3) Types of lands to which the provisions apply	(4) Type of Statute	(5) Unit of government receiving payment 17/	(6) Description of RS or PILT Provision	(7) EBSMC PLLRC File #
New Hampshire	N.H. REV. STAT. ANN. ch. 219 § 32 (1955)	State and Federal forests lands	PILT	Towns	If there are no state property taxes, then the town may receive an amount up to that which they would have received had the lands been taxable.	
	N.H. REV. STAT. ANN. tit. 79 §§ 3 & 13 (1955)	All forest land, both private and public	RS	Town	The town receives the proceeds from a 10% state stumpage value tax imposed on commercial timber cutting.	
New Jersey	N.J. STAT. ANN. tit. 54 § 4-2.1(1952)	All state land except park, forest and highway lands	Subject to local taxation	All taxing districts	All state land is subject to local taxation except state park, forest and highway land provided that the municipal area is made up of 9% or more state owned land.	295
	N.J. STAT. ANN. tit. 54 §§ 4A-4 & 4A-5 (1952)	Land owned by Palisades Interstate Park Commission	PILT	Municipality	Any municipality in which the Commission owns more than 10% of the total acreage tax equivalent.	
	N.J. STAT. ANN. tit. 58 §§ 20-5 & 21-6 (1952)	Land acquired for Round Valley Reservation and Spruce Run Reservation	PILT	Municipality	Municipality receives a two part payment consisting of the amount last paid as taxes on the acquired land plus an 8% declining percentage of last taxes paid on improvements from 1958 for 13 years.	
	N.J. STAT. ANN. tit. 32 § 1-144 (1952)	Land acquired by Port of N.Y. Authority	PILT	Borough, village, town, city county or other municipality	The Authority is empowered to enter into agreements compensating municipalities for tax loss and make PILT payments to them of not more than the taxes last paid on the acquired land.	

17/ The units referred to are only those where the lands of column 3 are located and revenues shared are only those produced on those lands.

LAE-26

(1) State	(2) Citation	(3) Types of lands to which the provisions apply	(4) Type of Statute	(5) Unit of government receiving payment [18]	(6) Description of RS or PILT Provision	(7) EBSMC PLLRC File #
New Jersey	N.J. STAT. ANN. tit. 32 § 3-12 (1952)	Land acquired by the Delaware River Commission for purposes other than transportation	PILT	Municipality	The commission is empowered to enter into agreements compensating municipalities for tax loss on land acquired since 1950 for purposes other than bridges, tunnels or passenger transportation.	
	N.J. STAT. ANN. tit. 13 § 1-22 (1952)	Land acquired by Board of Conservation & Development	PILT	Municipality	Any municipality in which the Board of Conservation and Development has acquired more than 10 acres for a state forest, park or other reservation receives 10¢ per acre.	
New Mexico	No apparent provisions for the distribution of state funds to compensate for state owned lands.[19]					296
New York	N.Y. PUB. L.L. § 19-a	All state land in cities of 75,000 or more	PILT	City	Cities of 75,000 or more in which state owned property represents 25% assessed valuation of the tax roll receive payments equal to 1% of acquisition costs.	297
	N.Y. R. PROP. § 532	All state lands situated in certain specifically enumerated counties	Subject to taxation	All tax districts	All the lands listed in the statute are subject to local taxation for all purposes.	
	N.Y. R. PROP. § 536	All state lands located in the counties mentioned in the statute	Subject to taxation	School district	All the lands listed are subject to local taxation for only school purposes.	

---

[18] The units referred to are only those where the lands of column 3 are located and revenues shared are only those produced on those lands.

[19] Confirmed by state officials. See EBSMC PLLRC File # 296.

LAE-27

(1) State	(2) Citation	(3) Types of lands to which the provisions apply	(4) Type of Statute	(5) Unit of government receiving payment 20/	(6) Description of RS or PILT Provision	(7) EBSMC PLLRC File #
North Carolina	GEN. STAT. of N.C. ch. 105 § 296.1 (1964)	All state timberland	RS	County	15% of the revenues from the proceeds of the gross sales of wood products from state timberlands except agriculture, prison or education lands to the county of origin	298
	GEN. STAT. of N.C. ch. 113 § 42 (1964)	All state lands donated for forests or parks	RS	County	50% of the net profits from the administration of the land goes to the county school fund.	
North Dakota	N.D. CODE tit. 57 § 02.1-02 (1960)	Land under the control of Commissioner of Fish and Game	PILT	County	All counties with lands under the control of the Commissioner receive tax equivalent payments equal to the taxes levied on similar property.	299
	N.D. CODE tit. 4 § 19-08 (1960)	Lands acquired for state forests	RS	County school fund	50% of the revenues realized from lands acquired by the State for state forests.	
	N.D. CODE tit. 57 § 02-08 (1960)	Lands contracted to be sold by the State	Subject to taxation	All taxing districts		
Ohio	OHIO REV. CODE ANN. tit. 1503 § 15 (1964)	State forests	RS	County	25% of the revenues from the sale of forest products and the granting of mineral leases paid to the general fund of the county of origin.	300

20/ The units referred to are only those where the lands of column 3 are located and revenues shared are only those produced on those lands.

LAE-28

(1) State	(2) Citation	(3) Types of lands to which the provisions apply	(4) Type of Statute	(5) Unit of government receiving payment 21/	(6) Description of RS or PILT Provision	(7) EBSMC PLLRC File #
Ohio	OHIO REV. CODE ANN. tit. 1531 § 1531 (1964)	Land held by the Division of Wildlife	PILT	County	The Chief of the Division of Wildlife pays each county 1% of the value of such lands exclusive of improvements shown on auditor's records of taxable value at the time of acquisition. Payments credited for school purposes in school district of origin.	
	OHIO REV. CODE ANN. tit. 1541 § 08 (1964)	State land adjacent to certain lakes	RS	County	10% of proceeds from the rental of these lands are paid by the Division of Parks to the county. The rents are equal to 6% of the appraised value of the land.	
Oklahoma	No apparent provisions for the distribution of state funds to compensate for state owned lands.22/					301
Oregon	ORE. REV. STAT. tit. 530 §§110-120 (1953)	State forest lands	RS	County	After 10% of the revenues are diverted for fire control (up to $200,000), 75% of the remaining funds from the administration of forest are returned	302
	ORE. REV. STAT. tit. 496 § 340 (1953)	State lands under the control of the game commissioner	PILT	County	Payments equal to the ad valorem taxes on similar property are made to the counties.	
	ORE. REV. STAT. tit. 110 § 201 (1953)	State land held under contract for purchase	Subject to taxation	All taxing authorities		

21/ The units referred to are only those where the lands of column 3 are located and revenues shared are only those produced on those lands.
22/ Confirmed by state officials. See EBSMC PLLRC File # 301.

LAE-29

(1) State	(2) Citation	(3) Types of lands to which the provisions apply	(4) Type of Statute	(5) Unit of government receiving payment 23/	(6) Description of RS or PILT Provision	(7) ESSHC PLLRC File #
Pennsylvania	PA. STAT. ANN. tit. 72 § 4303 (1959)	Forests	PILT	County, town and school districts	The State pays the county 20¢ an acre for state forest land which must be distributed 40% to county 40% to the school district and 20% to the town.	303
	PA. STAT. ANN. tit. 72 § 3946.19 (1959)	Lands acquired by the State for recreation, conservation and historical purposes	PILT	Political subdivision or school district	Tax equivalent where acquisition by the commonwealth reduces the taxable base.	
	PA. STAT. ANN. tit. 24 § 6-604 (1959)	Lands acquired by the State for flood control	PILT	School districts	Tax equivalent	
Rhode Island	No apparent provisions for the distribution of state funds to compensate for state land ownership.24/					304
South Carolina	CODE of LAWS of S.C. tit. 29 § 28 (1962)	State Forestry Commission lands	RS	County school fund	50% of the net profits from the lands are returned to the counties of origin and paid to the school fund from lands owned by the Commission.	305
	CODE of LAWS of S.C. tit. 29 §§ 29 & 29.1 (1962)	State forest lands and park lands	RS	County	25% of the gross proceeds from the sale of timber gravel and land rentals on land managed by the Commission is returned to the counties of origin to be spent for general school purposes.	

LAF 3-

23/ The units referred to are only those where the lands of column 3 are located and revenues shared are only those produced on those lands.

24/ Confirmed by state officials. See ESSHC PLLRC file # 304.

(1) State	(2) Citation	(3) Types of lands to which the provisions apply	(4) Type of Statute	(5) Unit of government receiving payment 23/	(6) Description of RS or PILT Provision	(7) ESSHC PLLRC File #
South Carolina	CODE of LAWS of S.C. tit. 59 § 8.1 (1962)	Public Service Authority lands acquired before 1950	PILT	County and school district	Payments equal to those made in 1964 are made to the counties and school districts mentioned in the statute after the payment of expenses and $225,000 to the state.	
South Dakota	S.D. CODE tit. 45.0203 (1-6) (1939)	State and county school land exempt from taxation	PILT	County and school district	Payments equal to tax losses sustained from exemption of these lands are made to the counties of origin	306
	S.D. CODE tit. 45.0203 (7) (1939)	Land under State Board of Charities and Corrections and State Board of Regents	PILT	County and school district	Payments equal to the average acreage taxes on land within the county. Lands must be outside the corporate limits of any city or town.	
	S.D. CODE CONST. Art. XI § 5 (1939)	Lands acquired under the Rural Credit Act	Subject to taxation	Local tax districts	Manner in which the legislation provides.	
Tennessee	No apparent statutes for the distribution of state funds to compensate for state land ownership.					307
Texas	TEX. CIVIL STAT. tit. 122 art. 7150 (6) (1966)	State prison farm land	Subject to local taxes	County school districts	Lands taxable by county and independent school lands in whose jurisdiction they are located. Improvements not included.	308

23/ The units referred to are only those where the lands of column 3 are located and revenues shared are only those produced on those lands.

(1) State	(2) Citation	(3) Types of lands to which the provisions apply	(4) Type of Statute	(5) Unit of government receiving 26/ payment	(6) Description of RS or PILT Provision	(7) ERSMC PLLRC File #
Texas	TEX. CIVIL STAT. tit. 122 art. 7150 (4a) (1966)	Lands of state created electrical utilities	PILT	All tax districts	The utilities make payments to all tax districts in which they have real property equal to the ad valorem property tax of similar lands.	
	TEX. CIVIL STAT. tit. 122 art. 7150 c (1) (1966)	Lands of the University of Texas	Subject to county tax	County	All lands are subject to the same county taxes as other real property in the county.	
Utah	No apparent provisions for the distribution of state funds to compensate for state land ownership. 27/					309
Vermont	VT. STAT. ANN. tit. 32 § 3656 (1959)	State forests and parks 28/	Subject to local taxation	Towns	The lands are subject to local taxation with the provision that they shall never be assed at more than $3.00 an acre.	310
	VT. STAT. ANN. tit. 32 § 3614 (1959)	State forests and parks	RS	Towns	The state pays a special 10% tax on the gross stumpage value of the amount of timber cut at commercial cutting.	
Virginia	CODE of VA. tit. 10 § 73 (1950)	State forests and wildlife lands	RS	County	25% of the gross revenues derived from the lands is paid to the county according to the percentage of revenues their lands produced.	311

26/ The units referred to are only those where the lands of column 3 are located and revenues shared are only those produced on those lands.
27/ Confirmed by state officials. See ERSMC PLLRC File # 309.
28/ Under a separate section (tit. 10 § 1605) the state uses this formula (§ 3614 & § 3656) with respect to national forests as well.

LAF 32

LAE-37

(1) State	(2) Citation	(3) Types of lands to which the provisions apply	(4) Type of Statute	(5) Unit of government receiving payment 29/	(6) Description of RS or PILT Provision	(7) EBSMC PLLRC File #
Washington	REV. CODE of WASH. ANN. ch. 76 § .04 .130 (1961)	State forests and parks	RS	County	All fines collected on these lands are paid to the county in which the offense occurred.	312
	REV. CODE of WASH. ANN. ch. 76 § .12 .120 (1961)	State forests	RS	County	50% of the revenue from the sale or lease of timber, timberland and Christmas trees to counties of origin.	
	REV. CODE of WASH. ANN. ch. 79 § .16 180 (1961)	Harbor areas and tidelands within an established port district	RS	County	75% of the rentals from the leasing of the land is paid to the county in which the land is located for harbor and waterfront improvement.	
	REV. CODE of WASH. ANN. ch. 77 §§ .12 .201 & .12.203 (1961)	Game lands over 100 acres	PILT	County	The county commissioners of any county may elect to relinquish fines collected on state game lands within their county and to receive a tax equivalent payment.	
West Virginia	No apparent provisions for the distribution of state funds to compensate for state land ownership.30/					313
Wisconsin	WIS. STAT. ANN. tit. 70 § 43 (1957)	State forest, hunting and fishing grounds	PILT	Town	30¢ per acre is paid the town of origin annually by the Conservation Commissioner.	314
	WIS. STAT. ANN. tit. 70 § 114 (1957)	Residential land used by educational institution	Subject to taxation	All tax authorities	Such property is subject to any tax levied for school purposes.	

29/ The units referred to are only those where the lands of column 3 are located and revenues shared are only those produced on those lands.

30/ West Virginia has a constitutional provision which has been interpreted by the State Supreme Court to prohibit payments by the State to its political subdivisions. See EBSMC PLLRC File # 313.

(1) State	(2) Citation	(3) Types of lands to which the provisions apply	(4) Type of Statute	(5) Unit of government receiving payment 31/	(6) Description of RS or PILT Provision	(7) EBSMC PLLRC File #
Wisconsin	WIS. STAT. ANN. tit. 70 § 118 (1957)	Tax exempt lands of the Conservation Commission	PILT	Municipality	Conservation Commissioner negotiates for payments for services available to others for a fee or a general property tax.	
Wyoming	No apparent provisions for the distribution of state funds to compensate for state land ownership. 32/					315

C4E34

31/ The units referred to are only those where the lands of column 3 are located and revenues shared are only those produced on those lands.

32/ Confirmed by state officials. See EBSMC PLLRC File # 315.

III. Summary Analysis of Australian and Canadian Law Providing Financial Assistance to Local Units of Government with Respect to Publicly Owned Real Property

A. Australia

1. General

Australia is governed under a Federal system of government. The county is divided into six States: New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania. The system of government in force at the Federal as well as the State level is cabinet, or responsible government.

The Federal Parliament, which consists of a Crown Representative (Governor-General), a Senate and a House of Representatives, has limited powers which are laid down in the Federal Constitution. State Parliaments are subject to the provisions of their own constitutions. The powers to be exercised by the Federal authorities are specified in the Constitution; all other powers are left to the States. In addition to the Federal and State Governments, there are also numerous local governments which perform functions similar to those of local governments in the United States.1/

Very little information appears to be available concerning the extent of Federal as compared with State land ownership as well as the practices and policies in Australia relating to payments made to local units of government by either the Commonwealth or the various States on publicly held real property ("Crown lands"). Requests for information concerning the extent of ownership by the individual States and the Federal Government of real property to the Australian Government and to the Australian Embassy produced no meaningful information. It is known, however, that large areas of Australia are government owned and that significant amounts of this land is leased to private parties.2/ So far as the Commonwealth property is concerned, the general policy is that no locally assessed taxes are paid and no payments in lieu of taxes are made to local units of government. This is in accord with Section 114 of the Australian Constitution which exempts from taxation property belonging to the Commonwealth and the States.

1/ Australia Official Handbook, 1967, produced by authority of the Minister for the Interior.

2/ The information contained in this part is based on a letter addressed to the Director of the PLLRC signed by J.A. Costello for the Secretary of the Australian Department of the Interior. EBSMC PLLRC File #321.

The Commonwealth has agreed to pay "as an act of grace" the equivalent of the local taxes which would be assessed on its property were it not tax exempt. In general, payments in lieu of taxes are made when the activities on Commonwealth property or the property itself is used for "commercial" rather than for purely government purposes. Thus, payments are made with respect to:

(a) housing erected on Commonwealth property for government employees;

(b) certain Commonwealth property which has been leased to private third parties, presumably for commercial purposes;

(c) properties acquired by the Commonwealth on which are erected residential or business premises and the buildings are occupied by persons other than the Commonwealth; and

(d) property owned or leased by Commonwealth instrumentalities engaged in commercial enterprises in competition with private firms.

Payments are also apparently made for construction costs of roads, footpaths, and curbing on lands abutting Commonwealth property and for any services, such as water, sewage, electricity, and garbage collection rendered by local authorities with respect to Commonwealth property.

There are apparently no revenue sharing arrangements in force with respect to Commonwealth lands.

From the information available, it appears that roughly the same system is in force at the State level.

2. Discussion

When compared with the revenue sharing and payment in lieu of tax arrangements in the United States, the Australian system appears to be much less formalized. As a practical matter, this "discretionary" feature which is a noticeable element in the Australian and Canadian systems appears to be of little significance since payments (in all these counties, under their respective laws), are being made.

The absence of revenue sharing statutes in Australia (and in Canada) may also be explained by the difference in public land holdings patterns. In Canada, most, if not all, of the publicly held lands capable of producing revenue are owned by the Provinces rather than by the central government.

It should also be observed that a greater proportion of publicly owned lands are uninhabited and uninhabitable in Australia (and in Canada) than in the United States. As such, these lands probably impose very little, if any, burden on the local communities, and accordingly, the necessity for a comprehensive system of compensatory payments to local governments may not arise.

Finally, under the Australian system, it appears that payments are only to be made where the Commonwealth is engaged in activities which essentially are competitive with private enterprise. While payments in Australia are also made for goods and services these payments appear to be in the nature of "service charges" rather than in lieu of tax payments. Accordingly, if no services are rendered, no charges appear to be levied in Australia. This would not necessarily be the case under some of the equivalent U.S. payment in lieu of tax statutes.

B. Canada

1. General

In Canada, real estate held by the "Crown in right of Canada" or of any Province has been tax-exempt since the British North American Act of 1867.[3] As in the United States, real estate taxes in Canada constitutes a major source of revenue to local communities.[4]

The tax-exempt status of Crown lands (Federally and Provincially-owned real estate) did not impose significant burdens on Canadian municipalities so long as the demand for local government goods and services was at a low level.

During The Depression and World War II, there was a gradual increase in the demand for government services and government participation in what had traditionally been considered private business activities. As might be expected, the problems associated with the tax-exempt status of publicly-held property increased proportionately.[5] The Canadian response, both at the Federal and Provincial levels was the enactment of what are essentially payment in lieu of tax statutes. At the Federal level financial assistance to local units of government was provided under the terms of the Municipal Grants Act of 1951 (the "Act").[6] Provincial activity in this area was marked by the enactment of similar statutes in eight provinces, which contain ninety-seven percent of Canada's population.[7]

3/ British North American Act of 1867, 30-31 Vict., c.3 (Can.).

4/ Enc. 4 to letter dated September 14, 1967 to H.L. Moffett, Acting Director of PLLRC signed by H.D. Clark, Federal-Provincial Relations Division, Canadian Department of Finance, EBSMC PLLRC File #327.

5/ Clark letter supra, note 4, enc. 7.

6/ R.S.C. 1962, c.182 as amended by 1955, C.49 and 1957, C.10.

7/ Clark letter supra, note 3.

2. Federal Law

The approach adopted in Canada both at the Federal and Provincial level differs considerably from that adopted by either the United States Federal Government or the various States. In Canada all Federal payments made to local units of government are administered by the Minister of Finance (the "Minister"). This is in contrast to the United States where a number of Federal departments and/or other government agencies are involved in making payments to local units of government with respect to the Federal lands. In addition, it would appear that in Canada the administrative functions relating to the management of Crown lands have been separated from the program of financial assistance to local units of government because of the tax-exempt status of Crown lands. This is in sharp contrast to the United States where the usual practice is for Federal agencies to both manage public lands, and to make payments relating to such lands. Possibly, this is due to the fact that there is only one Canadian Federal statute providing for such payments, while in the United States there are many. Furthermore, it is understood that the reason Federal payments to local governments are made by a single government agency in Canada is because the Act as originally enacted required an aggregation of all Federally owned property to determine whether a municipality was eligible for grants.[9] This requirement led to a centralized administration in one agency, which acted as a sort of "clearing house" The Act originally excluded from Federal properties, with respect to which grants could be made, any property which did not receive "material services" from the municipality in which it was located. "Such a provision lent itself to administration by the Department of Finance."[10] Consideration should also be given to the fact that the Provinces, not the Federal Government, are the largest landowners in Canada. The Provinces own forty-nine percent of the land area of Canada, while the Federal Government owns only thirty-nine percent, almost all of which is located in the Yukon and Northwest Territories.[11]

---

[9] See letter dated February 8, 1968 to EBSMC signed by D.H Clark, Federal-Provincial Relations Division, Canadian Department of Finance, EBSMC PLLRC File #327.

[10] Ibid.

[11] The Federal Government owns only two percent of the land in Canadian Provinces (not including the Yukon and Northwest Territories). See letter with enclosure dated November 10, 1967 to EBSMC signed by D.H. Clark, Federal-Provincial Relations Division, Canadian Dept. of Finance, EBSMC PLLRC File #327.

While embodying many of the concepts found in the various American statutes, the Act is significantly different from any of the U.S. Federal and State statutes. Basically, the Act authorizes the Minister, in his discretion, to make grants out of moneys appropriated by Parliament to municipalities with respect to Federal property located in such Municipality.[12] The amount of the grant is limited by a number of factors:

(a) payments may not exceed the municipal tax rate applied to the value of Federal property;

(b) the value of Federal property is determined by the Minister, although his assessment generally reflects local evaluation;

(c) certain specifically enumerated Federal property - conservation, park, irrigation, reclamation and reforestation lands, Indian reservations, military bases, government corporation lands and certain government buildings in Ottawa - are excluded from any computation of municipal grants;

(d) in determining the amount of any grant to a municipality, the Minister may deduct from the amount that might otherwise be payable (1) an amount which represents the value of a service that is customarily furnished by the municipality to real property but which the Federal Government does not accept with respect to Federal property in the municipality either because (a) the Federal Government furnishes such services itself, (b) the Federal Government does not need such services, or (c) the municipality cannot furnish the required services; or (2) an amount which represents the value of services furnished by the municipality that is furnished to taxable property in the municipality by the Federal Government;[13]

---

[12] "Municipality includes any municipal or other public board, commission, corporation or authority that, in the opinion of the Minister, exercises a function of local government under powers conferred by provincial statute, and that has power to levy a real estate tax." Municipal Grants Act, 1951. Clark letter *supra* note 3, enc. 1.

[13] The original version of the Act contained a "threshold limitation" which provided that a municipality would receive a payment only if more than 4% of the assessed value of property within the municipality was Federally-owned. The Act as amended lowered this percentage from 4% to 2% in 1955, and in 1957 the limitation was dropped altogether. Some commentators have concluded that this indicates that this limitation was merely a transition step to unlimited payments. See, *e.g.*, Manning, Raymond E., *Federal Land Ownership and the Public Land Laws*, House Committee on Interior Affairs, 83d Cong., 2d Sess. 99 (1954) (Comm. Print No. 23).

(e) the Act authorizes the Minister, in his discretion, to make grants with respect to two other types of Federal property: (1) certain Federal government buildings in Ottawa (the Parliament buildings), and (2) parks, Indian Reservations, and military bases acquired since 1953. The payments made to the City of Ottawa are to be made on a basis which, in the opinion of the Minister, adequately compensates the city for the services it furnishes[14] while those made with respect to parks, etc. are on a declining percentage basis (25%) with up to a full tax equivalency payment being made the first year of acquisition.

Canadian municipalities may also receive additional payments with respect to property held by Crown corporations, since the property of these corporations, like every other agency of the Federal Government is tax-exempt. In recent years, the Federal Government has "encouraged" Crown corporations to pay the taxes that would have been levied against their property were it privately owned, and all Crown corporations are either now paying local taxes or have agreed to do so in the near future.[15] There is apparently no sharing of the revenues realized from Federal or Provincial lands. Revenues from natural resources in Canada accrue almost entirely to the Provinces since the Federal Government has few large land holdings in the Provinces.[16]

3. Provincial Law

As previously pointed out the ownership of public land in Canada differs importantly from the situation prevailing in the United States in that most public land is held by the Provinces rather than the Federal Government.[17] Accordingly, the solutions to the problems created for local governments by the tax-exempt status of public lands is primarily a Provincial concern. Provincial statutes are patterned after the Federal Municipal Grants Act. Three Provinces apparently have no legislation in this area - Prince Edward's Island, Newfoundland and Saskatchewan.

---

[14] According to representatives of the Canadian Government "this grant is based largely on an estimate of the amount of taxes which would be payable in respect to hypothetical office buildings of a normal standard construction which would house the number of persons who work in the Parliament buildings." Clark letter *supra* note 9.

[15] See Clark letter *supra* note 4, encs. 2&3.

[16] Clark letter *supra* note 4.

[17] See text accompanying note 11 *supra*. In the Yukon and Northwest Territories, however, public land is still held by the Federal Government. This land is generally so barren and unhabitable that its tax-exempt status is probably no burden to any established local government unit.

The eight other Provinces have emphasized different aspects of the Federal program. The older provisions, in Ontario, Alberta, Manitoba and British Columbia[18] stress the limitations, while the more recent statutes focus on the local assistance aspects. Thus, Ontario and Alberta make full tax equivalency payments on some Provincial land, but both have extensive categories of land held by the "Crown in right of the Province" with respect to which no payments are made. Manitoba, on the other hand, makes payments on all Provincially-owned real estate. However, its statute permits only assessment of land; buildings and other improvements may not be included. British Columbia has the most complex and, in many ways, the most limited provision of any of the Provinces. Its statute allows a payment of fifteen mills on the full assessed value of eligible land and seventy-five percent of assessed value of eligible improvements subject to certain conditions: (a) forests, parks, highways, vacant land and land acquired for conservation, irrigation, reforestation or reclamation are all excluded from "eligible lands"; (b) "assessed value" is only fifty percent of the actual value of the property; and (c) no municipality may receive a grant in an amount in excess of ten percent of the taxes levied for schools and local improvements.[19]

The statutes of Quebec, Nova Scotia and New Brunswick tend to be less restrictive. For example, New Brunswick's Municipal Assistance Act provides that the Minister of Municipal Affairs make full payments in lieu of taxes on all Provincial and Provincial corporate property.[20]

4. Comparison of Canadian and U.S. Systems

a. Public Land Ownership Patterns:

The differences in the methods by which the Federal Governments of Canada and the United States have chosen to financially assist local units of government because of the presence of tax-exempt publicly-held property appear to be related to the different patterns of government land holdings in the two countries. The different patterns of public land holdings in the two countries also explain why Canada has no revenue sharing statutes at the Federal level. One difference not explained by the different land holding patterns is the apparently complete absence of restrictions in the uses to which in lieu payments may be put.

b. Canadian Provincial Law

A more meaningful comparison between the two countries can be made between the U.S. Federal statutes and the Canadian Provincial statutes. The Canadian system, even at the Provincial level, appears to be entirely composed of payments in lieu of taxes while the U.S. system embraces both revenue sharing and payments in lieu of tax statutes.

---

[18] REV. STAT. of ONT., c258 (1960); Crown Property Municipal Grants Act, STAT. ALTA., c.20 (1961); Municipal Act, REV. STAT. MAN., c.173 398A (5), (6) (1964).

[19] Municipalities Aid Act Amendment Act (1963) REV. STAT. of B.C. c.18 (1963).

[20] Municipal Assistance Act, REV. STAT. of N.B., c.16 (1966).

Viewed from the Provincial level, the Canadian system presents a picture of multi-agency administration. The various "agencies", however, are political subdivisions with territorial responsibilities rather than, as is the case in the United States, various agencies of one level of government having different functional responsibilities. To illustrate, the Province of Quebec makes all intergovernmental payments in lieu of taxes in Quebec while in the United States intergovernmental payments might be made by or through the Forest Service, the Bureau of Land Management or any one of a number of other Federal agencies.

In Canada, as in the United States, payments in lieu of taxes are not made with respect to all publicly-owned lands. In Canada, however, the various Provincial enactments are all inclusive but provide for extensive exceptions, while in the United States the Federal statutes are of limited applicability.

c. Appropriation Oriented

One difference between the Canadian system not attributable to the different public land holding patterns in the two countries is that all the Canadian payment in lieu of tax laws both at the Federal and Provincial level appear to depend on annual appropriations for their implementation. Thus, the various legislative bodies concerned have the opportunity to review the situation.

d. Public Corporations and Authorities

In Canada some Crown corporations such as the St. Lawrence Seaway Authority, Atomic Energy of Canada, Limited, and the Central Mortgage and Housing Corporation, are authorized to make payments in lieu of taxes in the same way that similar U.S. corporations such as the AEC and the St. Lawrence Seaway Development Corporations are.

A listing of Canadian Crown corporations would also include such entities as the Canadian Broadcasting Corporation, Canadian National Railways, and Air Canada; however, in the United States the equivalent entities are privately-owned, and as such, are subject to State and local property taxes.

PAYMENTS IN LIEU OF TAXES AND REVENUE SHARING ON PUBLIC LANDS

Appendix No. 2

Sliding Scale Highway Aid, Reclamation Fund, TVA, Data Reforms

EBS Management Consultants Incorporated

Washington, D. C.

July, 1968

(Republished with revisions November 1970)

Appendix No. 2

This appendix contains writeups on four subjects, unrelated to each other, part of the resource study performed. Each of the topics covered in the writeups contained in this appendix require substantial data and/or analysis and thereby result in a fair number of pages. With the view of restricting the volume of the report to the smallest possible size, these writeups are contained in this appendix though their subjects were briefly mentioned in the main report.

This appendix contains:

1. Analysis of the Effects of Ineligibility for Participation in Sliding Scale Rates under the Federal Aid Highway Act
2. Analysis of the Receipts to the Reclamation Fund by State Compared to Reclamation Project Expenditures in Those States
3. Analysis of the Tennessee Valley Authority - Payments in Lieu of Taxes
4. Data Reforms

1. ANALYSIS OF THE EFFECTS OF INELIGIBILITY FOR PARTICIPATION IN SLIDING SCALE RATES UNDER THE FEDERAL AID HIGHWAY ACT

I. Federal-Aid Highway Program

This program is intended to accelerate the construction of the Federal-aid highway system by providing that varying percentages of the cost of constructing roads within the states shall be borne by the Federal government. Above certain minimums the varying percentages are directly related to the amount of Federally owned lands within each state. Thus, 23 U.S.C. § 120 (1964) [1] provides that in those states where Federal land ownership exceeds 5% of the total land area of the state, the Federal share of highway construction costs will be increased on a "sliding scale". Two formulas are provided, one for the primary and secondary system, the other for the Interstate System. The formulas are as follows:

---

[1] 23 U.S.C. § 120 (1964) provides in part as follows:

> "(a) Subject to the provisions of subsection (d) of this section, the Federal share payable on account of any project, financed with primary, secondary, or urban funds, on the Federal-aid primary system and the Federal-aid secondary system shall not exceed 50 per centum of the cost of construction, except that in the case of any State containing nontaxable Indian lands, individual and tribal, and public domain lands (both reserved and unreserved) exclusive of national forests and national parks and monuments exceeding 5 per centum of the total area of all lands therein, the Federal share shall be increased by a percentage of the remaining cost equal to the percentage that the area of all such lands in such State, is to its total area.
>
> "(c) ...the Federal share payable on account of any project on the Interstate system...shall be increased to 90 per centum of the total cost thereof, plus a percentage of the remaining 10 per centum of such cost in any State containing unappropriated and unreserved public lands and nontaxable Indian lands, individual and tribal, exceeding 5 per centum of the total area of all lands therein, equal to the percentage that the area of such lands in such State is to its total area, except that such Federal share payable on any project in any State shall not exceed 95 per centum of the total cost of such project."

A. Primary and Secondary System

If the total of Indian lands, individual and tribal, and public domain lands (both reserved and unreserved) exclusive of national forests, national parks and national monuments exceeds 5% of a state's land area, the Federal share will be:

$$.5 \times \frac{\text{Total Indian and public domain lands (less national forests etc)}}{\text{Total area of state}} + 50\%$$

B. Interstate System

If the total of Indian lands, individual and tribal, and unappropriated and unreserved public lands exceeds 5% of a state's land area the Federal share will be:

$$.1 \times \frac{\text{Total Indian and unreserved and unappropriated public lands in state}}{\text{Total area of state}} + 90\%$$

Under the Interstate System the Federal share may not exceed 95% of the costs of construction. Under either system the minimum share borne by the Federal government, regardless of the amount of Federal land ownership, is not less than 50% or 90%.

It should be noted that under the primary and secondary system formula, reserved public lands are included in the calculation of Federal land holdings. This is not the case under the Interstate System. No indication of the reasons for the difference has been found in the legislative history of this statute. The legislative history of the law, which dates back to 1916, clearly indicates, however, that the purpose of the sliding scale payments was to compensate the public land states for the tax free status of the Federal lands. [1] The legislative history also indicates that the 5% threshold requirement was adopted as a matter of administrative convenience. [2]. Finally, it is apparent that national forests were excluded from the calculation because the Congress felt that the states were already receiving payments for these lands under the National Forests Revenue Act. [3]

---

[1] See, e.g., S. Rep. No. 40, 67th Cong., 1st Sess. 1 (1921); S. Rep. No. 1725, 86th Cong., 2d Sess. 13 (1960).

[2] S. Rep. No. 40, 67th Cong., 1st Sess. 2 (1921).

[3] S. Rep. No. 1725, 86th Cong., 2d Sess. 12 (1960). The National Forests Revenues Act is discussed in Legal Digest LB in Appendix No. 1.

To ascertain the results of theexclusion of national forests, national parks and monuments acreage from the sliding scale rates, two comparative analyses are indicated. The first compares the "loss" of sliding scale payments with the payments under the Forest Highway program, the second makes a like comparison with Forest Fund payments.

II. Forest Highway Program

This program is based on 23 U.S.C. § 204 (1964). It provides for annual apportionments to the states based upon a formula reflecting the area and value of the land owned by the U.S. within the national forests. No changes in the apportionment to the various states and the total amount apportioned have occurred since 1961. The apportionment formula has been frozen since 1955 with the exception of the reallocation of Iowa's share as a result of the sale of the national forest there to the state.

The first step in quantifying the net effect of the loss of sliding scale benefits is the determination of the increase in the states' share in the cost of ABC and Interstate Highway construction, because these states are ineligible for sliding scale rates. Table No. R-2, pages 1-11, contains the appropriate calculations for the 10-year period 1957-1966. The states subjected to analysis are those which have more than 5% of their land in Federal ownership but which do not qualify for sliding scale benefits because of the exclusion of national forests, parks and monuments. (All the so-called "public land states" are eligible for participation in the sliding scale rates.)

The next step compares the sliding scale "loss" with the payments made or reserved under the Forest Highway program. Table No. R-1, pages 1-5, contains the appropriate figures for the 10-year period. The figures in column (3) of Table No. R-1 show the difference, or net "loss", for each of the years and the total for the 10-year period for each of the states and the 14 states combined. The combined annual losses have ranged from $14.3 million in 1957 to $20.2 million in 1966 with a high of $22.2 million in 1959. For the 10-year period the combined "loss" amounts to $172.3 million.

III. The National Forests Fund

A description of the provisions of the National Forests Revenues Act, 16 U.S.C. § 500 (1964), may be found in Digest LB, in Appendix No. 1 of this report.

If it were to be assumed that the revenue sharing provisions attendant to national forests, parks and monuments, compensate states and counties for the loss of highway sliding scale benefits, an impression of the incorrectness of this assumption is gained by the fact that (as shown in Table No. R-1) the net loss to these 14 states for the 10-year period amounted to $172.3 million while revenue sharing during the same period amounted to $34.3 million. 1/

1/ Source: EBSMC data bank, figures furnished by Forest Service.

The revenue sharing provisions under which these 14 states have obtained the above-mentioned $34.3 million likewise apply to the "Federal land intense states." Thus, the latter participate in and benefit from the highway sliding scale program provisions at the same time that they participate in revenue sharing programs.

The sliding scale payments to these 14 states, if they were eligible, as well as to all presently eligible states, would be reduced from the figures shown as dictated by the amount appropriated for this purpose. To gain an impression of the extent of such a reduction, for the fiscal year 1966 total appropriations amounted to $3.8 billion while the total "loss" to the 14 states amounted to $23.1 million or 0.6% of the total appropriation. Thus, if the sliding scale rates were to be apportioned to the 14 states, the calculated shares (col. (13) in Table R-2) as well as all other apportionments to all states would then be slightly over 99% of the actual apportionments which, of course, exclude sliding scale rates to the 14 ineligible states.

IV. Summary:

This analysis shows that the exclusion by Congress of national forests, parks and monuments from Federal lands for the purpose of determining the eligibility of states for sliding scale payments, on the grounds that the states receive other payments with respect to such lands, has had unintended consequences. The 14 states excluded from participation in the BPR sliding scale highway benefits because of the exclusion of national forests, parks and monuments in the eligibility calculations suffer a substantial inequity as compared with eligible states.

During the 10-year study period, the approximate loss of over $172 million less the payment of $34 million from the National Forest Fund leaves a "net loss" of $138 million to these 14 states. This calculation, which has recognized the benefit from direct and indirect payments and expenditures, must also be viewed in context with direct and indirect benefits as they apply to public land states. There, the states not only benefit from the reduction in state shares for the cost of highway construction but the Federal lands on account of which the eligibility was established for their participation in sliding scale programs often provides for greater revenue sharing payments. This would apply specifically to the payments under the Mineral Leasing Act.

TABLE NO. B-1 (1 of 3)

Comparison of "Losses" Due to Ineligibility for Sliding Scale Payments Less Forest Highway Aid Payments, Non-Intense Public Land States, 1957-1966

State and Year	Sliding Scale "Loss" ($000) (1)	F.H.A. Payments ($000) (2)	Difference Col. 1 less Col. 2 ($000) (3)
Arkansas			
1957	1,251	306	945
1958	1,371	408	963
1959	1,975	551	1,424
1960	1,430	449	981
1961	1,270	449	821
1962	1,230	449	781
1963	1,027	449	578
1964	1,401	449	952
1965	1,450	449	1,001
1966	1,521	449	1,072
Total 1957-1966	13,926	4,408	9,518
Florida			
1957	1,542	131	1,411
1958	1,670	174	1,496
1959	2,341	188	2,153
1960	2,062	217	1,845
1961	1,837	192	1,645
1962	2,394	192	2,202
1963	1,831	192	1,639
1964	2,461	192	2,269
1965	2,511	192	2,319
1966	2,780	192	2,588
Total 1957-1966	21,429	1,862	19,567
Georgia			
1957	1,177	79	1,098
1958	1,297	106	1,191
1959	1,868	131	1,737
1960	1,469	148	1,321
1961	1,317	116	1,201
1962	1,436	116	1,320
1963	1,149	116	1,033
1964	1,527	116	1,411
1965	1,565	116	1,449
1966	1,551	116	1,435
Total 1957-1966	14,356	1,160	13,196

Source: U.S. Bureau of Public Roads and Table No. B-2

Comparison of "Losses" Due to Ineligibility for Sliding Scale Payments Less Forest Highway Aid Payments, Non-Intense Public Land States, 1957-1966

State and Year	Sliding Scale "Loss" ($000) (1)	F.H.A. Payments ($000) (2)	Difference Col. 1 less Col. 2 ($000) (3)
Hawaii			
1957	NA	0	NA
1958	NA	0	NA
1959	NA	0	NA
1960	235	0	235
1961	255	0	255
1962	306	0	306
1963	301	0	301
1964	369	0	369
1965	606	0	606
1966	627	0	627
Total 1957-1966	2,699	0	2,699
Michigan			
1957	2,931	241	2,690
1958	3,203	322	2,881
1959	4,703	426	4,277
1960	3,704	354	3,350
1961	3,413	354	3,059
1962	3,615	354	3,261
1963	2,948	354	2,594
1964	3,888	354	3,536
1965	4,060	354	3,706
1966	4,087	354	3,733
Total 1957-1966	36,550	3,465	33,085
Minnesota			
1957	1,467	311	1,156
1958	1,634	435	1,199
1959	2,346	430	1,916
1960	1,532	456	1,076
1961	1,649	456	1,193
1962	1,709	456	1,253
1963	1,511	456	1,055
1964	1,922	456	1,466
1965	1,973	456	1,517
1966	2,074	456	1,618
Total 1957-1966	17,815	4,368	13,447

NA--Not Available

Source: U.S. Bureau of Public Roads and Table No. R-2

TABLE NO. K-1 (4 of 5)

Comparison of "Losses" Due to Ineligibility for Sliding Scale Payments Less Forest Highway Aid Payments, Non-Intense Public Land States, 1957-1966

State and Year	Sliding Scale "Loss" ($000) (1)	F.H.A. Payments ($000) (2)	Difference Col. 1 less Col. 2 ($000) (3)
Mississippi			
1957	768	106	662
1958	827	142	685
1959	1,205	253	952
1960	863	156	707
1961	813	156	657
1962	795	156	639
1963	630	156	474
1964	870	156	714
1965	901	156	745
1966	955	156	799
Total 1957-1966	8,627	1,593	7,034
New Hampshire			
1957	537	120	417
1958	605	160	445
1959	875	146	729
1960	671	176	495
1961	635	176	459
1962	652	176	476
1963	515	176	339
1964	664	176	488
1965	680	176	504
1966	704	176	528
Total 1957-1966	6,538	1,658	4,880
North Carolina			
1957	1,390	138	1,252
1958	1,517	185	1,332
1959	2,192	227	1,965
1960	1,393	203	1,190
1961	1,264	203	1,061
1962	1,293	203	1,090
1963	1,099	203	896
1964	1,481	203	1,278
1965	1,518	203	1,315
1966	1,509	203	1,306
Total 1957-1966	14,736	1,971	12,765

Source: U.S. Bureau of Public Roads and Table No. K-2

Comparison of "Losses" Due to Ineligibility for Sliding Scale Payments Less Forest Highway Aid Payments, Non-Intense Public Land States, 1957-1966

State and Year	Sliding Scale "Loss" ($000) (1)	F.H.A. Payments ($000) (2)	Difference Col. 1 less Col. 2 ($000) (3)
South Carolina			
1957	693	74	619
1958	760	98	662
1959	1,123	150	973
1960	793	108	685
1961	766	108	658
1962	788	108	680
1963	636	108	528
1964	834	108	726
1965	853	108	745
1966	896	108	788
Total 1957-1966	8,142	1,078	7,064
Tennessee			
1957	1,188	75	1,113
1958	1,269	101	1,168
1959	1,827	123	1,704
1960	1,563	111	1,452
1961	1,342	111	1,231
1962	1,372	111	1,261
1963	1,132	111	1,021
1964	1,502	111	1,391
1965	1,572	111	1,461
1966	1,675	111	1,564
Total 1957-1966	14,442	1,076	13,366
Virginia			
1957	1,528	146	1,382
1958	1,680	195	1,485
1959	2,216	247	1,969
1960	2,428	215	2,213
1961	2,050	215	1,835
1962	2,238	215	2,023
1963	1,781	215	1,566
1964	2,317	215	2,102
1965	2,397	215	2,182
1966	2,431	215	2,216
Total 1957-1966	21,066	2,093	18,973

Source: U.S. Bureau of Public Roads and Table No. R-2

Comparison of "Losses" Due to Ineligibility for Sliding Scale Payments Less Forest Highway Aid Payments, Non-Intense Public Land States, 1957-1966

State and Year	Sliding Scale "Loss" ($000) (1)	F.H.A. Payments ($000) (2)	Difference Col. 1 less Col. 2 ($000) (3)
West Virginia			
1957	642	89	553
1958	702	118	584
1959	1,014	152	862
1960	808	130	678
1961	715	130	585
1962	689	130	559
1963	629	130	499
1964	819	130	689
1965	867	130	737
1966	905	130	775
Total 1957-1966	7,790	1,269	6,521
Wisconsin			
1957	1,117	126	991
1958	1,209	168	1,041
1959	1,756	240	1,516
1960	1,188	185	1,003
1961	1,070	185	885
1962	1,097	185	912
1963	885	185	700
1964	1,213	185	1,028
1965	1,203	185	1,018
1966	1,272	185	1,087
Total 1957-1966	12,010	1,829	10,181
Total 16 States			
1957	16,231	1,942	14,289
1958	17,724	2,592	15,132
1959	25,457	3,282	22,175
1960	20,139	2,908	17,231
1961	18,396	2,851	15,545
1962	19,614	2,851	16,763
1963	16,094	2,851	13,243
1964	21,248	2,851	18,397
1965	22,156	2,851	19,305
1966	23,067	2,851	20,216
Total 1957-1966	200,126	27,830	172,296

Source: U.S. Bureau of Public Roads and Table No. R-2

TABLE NO. B-2 (3 of 11)

"Loss" to 14 States of Highway Program Sliding Scale Benefits Because of Exclusion of National Forest, Park and Monument Acreage

1957

State	Primary, Secondary, Urban Highway						Interstate Highway Programs						Total Reduction in State Share ($000) (13)
				State Share						State Share			
	Fed. Apportionment ($000) (1)	Total Program ($000) (2)	Fed. Proportion if Eligible (%) (3)	If Eligible ($000) (4)	If Ineligible ($000) (5)	Reduction ($000) (6)	Fed. Apportionment ($000) (7)	Total Program ($000) (8)	Fed. Proportion if Eligible (%) (9)	If Eligible ($000) (10)	If Ineligible ($000) (11)	Reduction ($000) (12)	
Arkansas	12,323	24,646	54.40	11,239	12,323	1,084	17,037	18,930	90.88	1,726	1,893	167	1,251
Florida	13,681	27,362	54.85	12,354	13,681	1,327	19,941	22,157	90.97	2,001	2,216	215	1,542
Georgia	19,178	38,356	52.65	18,162	19,178	1,016	27,349	30,388	90.53	2,878	3,039	161	1,177
Hawaii	3,743	7,486	NA	NA	3,743	NA	0	0	0	0	0	0	NA
Michigan	28,242	56,484	54.45	25,728	28,242	2,514	42,158	46,842	90.89	4,267	4,684	417	2,931
Minnesota	19,992	39,984	53.20	18,713	19,992	1,279	26,471	29,412	90.64	2,753	2,941	188	1,467
Mississippi	13,307	26,614	52.50	12,642	13,307	665	18,616	20,684	90.50	1,965	2,068	103	768
N. Hampshire	3,661	7,322	56.00	3,222	3,661	439	7,327	8,141	91.20	716	814	98	537
N. Carolina	19,857	39,714	53.00	18,666	19,857	1,191	29,897	33,219	90.60	3,123	3,322	199	1,390
S. Carolina	10,628	21,256	52.80	10,033	10,628	595	15,793	17,548	90.56	1,657	1,755	98	693
Tennessee	17,339	34,678	52.95	16,316	17,339	1,023	25,082	27,869	90.59	2,622	2,787	165	1,188
Virginia	15,767	31,534	54.15	14,458	15,767	1,309	23,715	26,350	90.83	2,416	2,635	219	1,528
W. Virginia	8,966	17,932	53.05	8,419	8,966	547	13,967	15,519	90.61	1,457	1,552	95	642
Wisconsin	18,933	37,866	52.55	17,967	18,933	966	26,723	29,692	90.51	2,818	2,969	151	1,117

Source: Based on data provided by the U.S. Bureau of Public Roads. Also, see notes on page 11 of Table No. B-2.

"Loss" to 14 States of Highway Program Sliding Scale Benefits Because of Exclusion of National Forest, Park and Monument Acreage

1958

TABLE NO. R-2 (2 of 11)

	Primary, Secondary, Urban Highway						Interstate Highway Programs						
				State Share						State Share			
State	Fed.Apportionment ($000) (1)	Total Program ($000) (2)	Fed.Proportion if Eligible (%) (3)	If Eligible ($000) (4)	If Ineligible ($000) (5)	Reduction ($000) (6)	Fed.Apportionment ($000) (7)	Total Program ($000) (8)	Fed.Proportion if Eligible (%) (9)	If Eligible ($000) (10)	If Ineligible ($000) (11)	Reduction ($000) (12)	Total Reduction in State Share ($000) (13)
Arkansas	12,647	25,294	54.45	11,521	12,647	1,126	24,701	27,446	90.89	2,500	2,745	245	1,371
Florida	14,009	28,018	54.85	12,650	14,009	1,359	28,903	32,114	90.97	2,900	3,211	311	1,670
Georgia	19,615	39,230	52.70	18,556	19,615	1,059	39,616	44,018	90.54	4,164	4,402	238	1,297
Hawaii	3,906	7,812	NA	NA	3,906	NA	0	0	0	0	0	0	NA
Michigan	29,198	58,396	54.45	26,599	29,198	2,599	61,119	67,910	90.89	6,187	6,791	604	3,203
Minnesota	20,196	40,392	53.30	18,863	20,196	1,333	38,301	42,557	90.66	3,975	4,256	281	1,614
Mississippi	13,559	27,118	52.50	12,881	13,559	678	26,959	29,954	90.50	2,846	2,995	149	827
N. Hampshire	3,820	7,640	56.05	3,358	3,820	462	10,625	11,806	91.21	1,038	1,181	143	605
N. Carolina	20,461	40,922	53.00	19,233	20,461	1,228	43,338	48,153	90.60	4,526	4,815	289	1,517
S. Carolina	10,793	21,586	52.85	10,178	10,793	615	22,859	25,399	90.57	2,395	2,540	145	760
Tennessee	17,851	35,702	52.90	16,816	17,851	1,035	36,351	40,390	90.58	3,805	4,039	234	1,269
Virginia	16,413	32,826	54.15	15,051	16,413	1,362	34,414	38,238	90.83	3,506	3,824	318	1,680
W. Virginia	9,263	18,526	53.05	8,698	9,263	565	20,252	22,502	90.61	2,113	2,250	137	702
Wisconsin	19,417	38,834	52.55	18,427	19,417	990	38,719	43,021	90.51	4,083	4,302	219	1,209

Source: Based on data provided by the U.S. Bureau of Public Roads. Also, see notes on page 11 of Table No. R-2.

"Loss" to 14 States of Highway Program Sliding Scale Benefits Because of Exclusion of National Forest, Park and Monument Acreage

1959

TABLE NO. R-2 (3 of 11)

State	Primary, Secondary, Urban Highway						Interstate Highway Programs						Total Reduction in State Share ($000) (13)
				State Share						State Share			
	Fed.Apportionment ($000) (1)	Total Program ($000) (2)	Fed.Proportion if Eligible (%) (3)	If Eligible ($000) (4)	If Ineligible ($000) (5)	Reduction ($000) (6)	Fed.Apportionment ($000) (7)	Total Program ($000) (8)	Fed.Proportion if Eligible (%) (9)	If Eligible ($000) (10)	If Ineligible ($000) (11)	Reduction ($000) (12)	
Arkansas	18,681	37,362	54.45	17,018	18,681	1,663	31,561	35,068	90.89	3,195	3,507	312	1,975
Florida	20,789	41,578	54.70	18,835	20,789	1,954	37,057	41,174	90.94	3,730	4,117	387	2,341
Georgia	28,968	57,936	52.70	27,404	28,968	1,564	50,626	56,251	90.54	5,321	5,625	304	1,868
Hawaii	5,839	11,678	NA	NA	5,839	NA	0	0	0	0	0	0	NA
Michigan	44,019	88,038	54.45	40,101	44,019	3,918	79,165	87,961	90.89	8,013	8,796	783	4,701
Minnesota	30,318	60,636	53.30	28,317	30,318	2,001	49,489	54,988	90.66	5,136	5,499	363	2,364
Mississippi	20,248	40,496	52.50	19,236	20,248	1,012	34,706	38,562	90.50	3,663	3,856	193	1,205
N. Hampshire	5,711	11,422	56.05	5,020	5,711	691	13,688	15,209	91.21	1,337	1,521	184	875
N. Carolina	30,369	60,738	53.00	28,547	30,369	1,822	55,577	61,752	90.60	5,805	6.175	370	2,192
S. Carolina	16,095	32,190	52.90	15,161	16,095	934	29,403	32,670	90.58	3,078	3,267	189	1,123
Tennessee	26,352	52,704	52.90	24,824	26,352	1,528	46,443	51,592	90.58	4,860	5,159	299	1,827
Virginia	24,326	48,652	54.20	22,283	24,326	2,043	44,091	48,990	90.84	4,726	4,899	173	2,216
W. Virginia	13,737	27,474	53.05	12,899	13,737	838	25,962	28,847	90.61	2,709	2,885	176	1,014
Wisconsin	28,902	57,804	52.55	27,428	28,902	1,474	49,735	55,261	90.51	5,244	5,526	282	1,756

Source: Based on data provided by the U.S. Bureau of Public Roads. Also, see notes on page 11 of Table No. R-2.

TABLE NO. R-2 (4 of 11)

"Loss" to 14 States of Highway Program Sliding Scale Benefits Because of Exclusion of National Forest, Park and Monument Acreage

1960

	Primary, Secondary, Urban Highway						Interstate Highway Programs						
				State Share						State Share			
State	Fed.Apportionment ($000) (1)	Total Program ($000) (2)	Fed.Proportion if Eligible (%) (3)	If Eligible ($000) (4)	If Ineligible ($000) (5)	Reduction ($000) (6)	Fed.Apportionment ($000) (7)	Total Program ($000) (8)	Fed.Proportion if Eligible (%) (9)	If Eligible ($000) (10)	If Ineligible ($000) (11)	Reduction ($000) (12)	Total Reduction in State Share ($000) (13)
Arkansas	13,145	26,290	54.50	11,962	13,145	1,183	24,701	27,446	90.90	2,498	2,745	247	1,430
Florida	14,774	29,548	54.70	13,385	14,774	1,389	64,451	71,612	90.94	6,488	7,161	673	2,062
Georgia	20,531	41,062	52.70	19,422	20,531	1,109	60,023	66,692	90.54	6,309	6,669	360	1,469
Hawaii	4,115	8,230	52.85	3,880	4,115	235	0	0	0	0	0	0	235
Michigan	30,750	61,500	54.45	28,013	30,750	2,737	97,759	108,621	90.89	9,895	10,862	967	3,704
Minnesota	21,344	42,688	53.30	19,935	21,344	1,409	16,889	18,766	90.66	1,754	1,877	123	1,532
Mississippi	14,224	28,448	52.50	13,513	14,224	711	27,313	30,348	90.50	2,883	3,035	152	863
N. Hampshire	4,025	8,050	56.05	3,538	4,025	487	13,681	15,201	91.21	1,336	1,520	184	671
N. Carolina	21,713	43,426	53.00	20,410	21,713	1,303	13,482	14,980	90.60	1,408	1,498	90	1,393
S. Carolina	11,391	22,782	52.90	10,730	11,391	661	20,497	22,774	90.58	2,145	2,277	132	793
Tennessee	18,749	37,498	52.90	17,662	18,749	1,087	73,779	81,977	90.58	7,722	8,198	476	1,563
Virginia	17,205	34,410	54.20	15,760	17,205	1,445	105,395	117,105	90.84	10,727	11,710	983	2,428
W. Virginia	9,780	19,560	53.05	9,183	9,780	597	31,168	34,631	90.61	3,252	3,463	211	808
Wisconsin	20,392	40,784	52.55	19,352	20,392	1,040	26,193	29,103	90.51	2,762	2,910	148	1,188

Source: Based on data provided by the U.S. Bureau of Public Roads. Also, see notes on page 11 of Table No. R-2.

TABLE NO. R-2 (5 of 11)

"Loss" to 14 States of Highway Program Sliding Scale Benefits Because of Exclusion of National Forest, Park and Monument Acreage

1961

	Primary, Secondary, Urban Highway						Interstate Highway Programs						
				State Share						State Share			
State	Fed.Apportionment ($000) (1)	Total Program ($000) (2)	Fed.Proportion if Eligible (%) (3)	If Eligible ($000) (4)	If Ineligible ($000) (5)	Reduction ($000) (6)	Fed.Apportionment ($000) (7)	Total Program ($000) (8)	Fed.Proportion if Eligible (%) (9)	If Eligible ($000) (10)	If Ineligible ($000) (11)	Reduction ($000) (12)	Total Reduction in State Share ($000) (13)
Arkansas	11,993	23,986	54.55	10,902	11,993	1,091	17,695	19,661	90.91	1,787	1,966	179	1,270
Florida	13,818	27,636	54.85	12,478	13,818	1,340	46,172	51,302	90.97	4,633	5,130	497	1,837
Georgia	19,162	38,324	52.75	18,108	19.162	1,054	43,000	47,778	90.55	4,515	4,778	263	1,317
Hawaii	3,924	7,848	53.25	3,669	3,924	255	0	0	0	0	0	0	255
Michigan	30,570	61,140	54.45	27,849	30,570	2,721	70,033	77,814	90.89	7,089	7,781	692	3,413
Minnesota	21,261	42,522	53.30	19,858	21,261	1,403	33,591	37,323	90.66	3,486	3,732	246	1,649
Mississippi	14,070	28,140	52.50	13,366	14,070	704	19,566	21,740	90.50	2,065	2,174	109	813
N. Hampshire	4,116	8,232	56.10	3,614	4,116	502	9,801	10,890	91.22	956	1,089	133	635
N. Carolina	19,998	39,996	53.00	18,798	19,998	1,200	9,658	10,731	90.60	1,009	1,073	64	1,264
S. Carolina	11,572	23,144	52.90	10,901	11,572	671	14,684	16,316	90.58	1,537	1,632	95	766
Tennessee	17,263	34,526	52.90	16,262	17,263	1,001	52,854	58,727	90.58	5,532	5,873	341	1,342
Virginia	16,024	32,048	54.20	14,678	16,024	1,346	75,503	83,892	90.84	7,685	8,389	704	2,050
W. Virginia	9,055	18,110	53.10	8,494	9,055	561	22,328	24,809	90.62	2,327	2,481	154	715
Wisconsin	18,907	37,814	52.55	17,943	18,907	964	18,764	20,849	90.51	1,979	2,085	106	1,070

Source: Based on data provided by the U.S. Bureau of Public Roads. Also, see notes on page 11 of Table No. R-2.

TABLE NO. R-2 (6 of 11)

"Loss" to 14 States of Highway Program Sliding Scale Benefits Because of Exclusion of National Forest, Park and Monument Acreage

1962

State	Primary, Secondary, Urban Highway						Interstate Highway Programs						Total Reduction in State Share ($000) (13)
	Fed.Apportionment ($000) (1)	Total Program ($000) (2)	Fed.Proportion if Eligible (%) (3)	State Share			Fed.Apportionment ($000) (7)	Total Program ($000) (8)	Fed.Proportion if Eligible (%) (9)	State Share			
				If Eligible ($000) (4)	If Ineligible ($000) (5)	Reduction ($000) (6)				If Eligible ($000) (10)	If Ineligible ($000) (11)	Reduction ($000) (12)	
Arkansas	11,118	24,236	54.50	10,103	11,118	1,015	21,505	23,894	90.90	2,174	2,389	215	1,230
Florida	18,741	37,482	54.79	16,946	18,741	1,795	56,111	62,346	90.96	5,636	6,235	599	2,394
Georgia	20,464	40,928	52.73	19,347	20,464	1,117	52,257	58,063	90.55	5,487	5,806	319	1,436
Hawaii	4,009	8,018	52.84	3,781	4,009	228	12,375	13,750	90.57	1,297	1,375	78	306
Michigan	31,153	62,306	54.45	28,380	31,153	2,773	85,109	94,566	90.89	8,615	9,457	842	3,615
Minnesota	21,692	43,384	53.26	20.278	21,692	1,414	40,822	45,358	90.65	4,241	4,536	295	1,709
Mississippi	13,257	26,514	52.50	12,594	13,257	663	23,779	26,421	90.50	2,510	2,642	132	795
N. Hampshire	4,046	8,092	56.10	3,552	4,046	494	11,911	13,234	91.20	1,165	1,323	158	652
N. Carolina	20,108	40,216	53.02	18,893	20,108	1,215	11,738	13,042	90.60	1,226	1,304	78	1,293
S. Carolina	11,568	23,136	52.91	10,895	11,568	673	17,845	19,828	90.58	1,868	1,983	115	788
Tennessee	16,516	33,032	52.90	15,558	16,516	958	64,232	71,369	90.58	6,723	7,137	414	1,372
Virginia	16,526	33,052	54.18	15,144	16,526	1,382	91,756	101,953	90.84	9,339	10,195	856	2,238
W. Virginia	8,123	16,246	53.09	7,621	8,123	502	27,135	30,150	90.62	2,828	3,015	187	689
Wisconsin	18,987	37,974	52.55	18,019	18,987	968	22,804	25,338	90.51	2,405	2,534	129	1,097

Source: Based on data provided by the U.S. Bureau of Public Roads. Also, see notes on page 11 of Table No. R-2.

TABLE NO. R-2 (7 of 11)

"Loss" to 14 States of Highway Program Sliding Scale Benefits Because of Exclusion of National Forest, Park and Monument Acreage

1963

State	Primary, Secondary, Urban Highway						Interstate Highway Programs						Total Reduction in State Share ($000) (13)
	Fed. Apportionment ($000) (1)	Total Program ($000) (2)	Fed. Proportion if Eligible (%) (3)	State Share: If Eligible ($000) (4)	State Share: If Ineligible ($000) (5)	Reduction ($000) (6)	Fed. Apportionment ($000) (7)	Total Program ($000) (8)	Fed. Proportion if Eligible (%) (9)	State Share: If Eligible ($000) (10)	State Share: If Ineligible ($000) (11)	Reduction ($000) (12)	
Arkansas	8,520	17,040	54.54	7,746	8,520	774	25,051	27,834	90.91	2,530	2,783	253	1,027
Florida	13,816	27,632	54.78	12,495	13,816	1,321	49,652	55,169	90.96	4,987	5,517	530	1,851
Georgia	16,099	32,198	52.73	15,220	16,099	879	44,106	49,007	90.55	4,631	4,901	270	1,149
Hawaii	3,213	6,426	52.84	3,031	3,213	182	18,794	20,882	90.57	1,969	2,088	119	301
Michigan	22,714	45,428	54.46	20,688	22,714	2,026	93,260	103,622	90.89	9,440	10,362	922	2,948
Minnesota	16,421	32,842	53.24	15,357	16,421	1,064	61,904	68,782	90.65	6,431	6,878	447	1,511
Mississippi	9,347	18,694	52.51	8,878	9,347	469	29,080	32,311	90.50	3,070	3,231	161	630
N. Hampshire	3,028	6,056	56.10	2,659	3,028	369	10,736	11,929	91.22	1,047	1,193	146	515
N. Carolina	16,047	32,094	53.02	15,078	16,047	969	19,576	21,751	90.60	2,045	2,175	130	1,099
S. Carolina	8,608	17,216	52.92	8,105	8,608	503	20,666	22,962	90.58	2,163	2,296	133	636
Tennessee	12,774	25,548	52.91	12,031	12,774	743	60,316	67,018	90.58	6,313	6,702	389	1,132
Virginia	13,179	26,358	54.18	12,077	13,179	1,102	72,735	80,817	90.84	7,403	8,082	679	1,781
W. Virginia	6,355	12,710	53.10	5,974	6,355	381	36,024	40,027	90.62	3,755	4,003	248	629
Wisconsin	15,054	30,108	52.54	14,289	15,054	765	21,164	23,516	90.51	2,232	2,352	120	885

Source: Based on data provided by the U.S. Bureau of Public Roads. Also, see notes on page 11 of Table No. R-2.

TABLE NO. R-2 (8 of 11)

"Loss" to 14 States of Highway Program Sliding Scale Benefits Because of Exclusion of National Forest, Park and Monument Acreage

1964

State	Primary, Secondary, Urban Highway						Interstate Highway Programs						
				State Share						State Share			
	Fed.Apportionment ($000) (1)	Total Program ($000) (2)	Fed.Proportion if Eligible (%) (3)	If Eligible ($000) (4)	If Ineligible ($000) (5)	Reduction ($000) (6)	Fed.Apportionment ($000) (7)	Total Program ($000) (8)	Fed.Proportion if Eligible (%) (9)	If Eligible ($000) (10)	If Ineligible ($000) (11)	Reduction ($000) (12)	Total Reduction in State Share ($000) (13)
Arkansas	12,244	24,488	54.59	11,120	12,244	1,124	27,138	30,153	90.92	2,738	3,015	277	1,401
Florida	19,264	38,528	54.83	17,403	19,264	1,861	53,789	59,766	90.97	5,397	5,977	580	2,441
Georgia	22,618	45,236	52.73	21,383	22,618	1,235	47,781	53,090	90.55	5,017	5,309	292	1,527
Hawaii	4,398	8,796	53.11	4,169	4,398	229	20,360	22,622	90.62	2,122	2,262	140	369
Michigan	32,316	64,632	54.47	29,427	32,316	2,889	101,031	112,257	90.89	10,227	11,226	999	3,888
Minnesota	22,189	44,378	53.24	20,751	22,189	1,438	67,063	74,514	90.65	6,967	7,451	484	1,922
Mississippi	13,573	27,146	52.55	12,881	13,573	692	31,503	35,003	90.51	3,322	3,500	178	870
N. Hampshire	4,145	8,290	56.11	3,638	4,145	507	11,631	12,923	91.22	1,135	1,292	157	664
N. Carolina	21,928	43,856	53.05	20,590	21,928	1,338	21,208	23,564	90.61	2,213	2,356	143	1,481
S. Carolina	11,835	23,670	52.91	11,146	11,835	689	22,389	24,877	90.58	2,343	2,488	145	834
Tennessee	18,269	36,538	52.94	17,195	18,269	1,074	65,343	72,603	90.59	6,832	7,260	428	1,502
Virginia	18,839	37,678	54.20	17,257	18,839	1,582	78,797	87,552	90.84	8,020	8,755	735	2,317
W. Virginia	9,129	18,258	53.01	8,579	9,129	550	39,026	43,362	90.62	4,067	4,336	269	819
Wisconsin	20,764	41,528	52.60	19,684	20,764	1,080	22,928	25,476	90.52	2,415	2,548	133	1,213

Source: Based on data provided by the U.S. Bureau of Public Roads. Also, see notes on page 11 of Table No. R-2.

TABLE NO. R-2 (9 of 11)

"Loss" to 14 States of Highway Program Sliding Scale Benefits Because of Exclusion of National Forest, Park and Monument Acreage

1965

State	Primary, Secondary, Urban Highway						Interstate Highway Programs						Total Reduction in State Share ($000) (13)
				State Share						State Share			
	Fed.Apportionment ($000) (1)	Total Program ($000) (2)	Fed.Proportion if Eligible (%) (3)	If Eligible ($000) (4)	If Ineligible ($000) (5)	Reduction ($000) (6)	Fed.Apportionment ($000) (7)	Total Program ($000) (8)	Fed.Proportion if Eligible (%) (9)	If Eligible ($000) (10)	If Ineligible ($000) (11)	Reduction ($000) (12)	
Arkansas	12,505	25,010	54.64	11,345	12,505	1,160	28,040	31,156	90.93	2,826	3,116	290	1,450
Florida	19,751	39,502	54.84	17,839	19,751	1,912	55,575	61,750	90.97	5,576	6,175	599	2,511
Georgia	23,411	46,822	52.71	22,142	23,411	1,269	49,368	54,853	90.54	5,189	5,485	296	1,565
Hawaii	4,491	8,982	54.43	4,093	4,491	398	21,036	23,373	90.89	2,129	2,337	208	606
Michigan	32,888	65,622	54.48	29,871	32,888	3,017	104,386	115,984	90.90	10,555	11,598	1,043	4,060
Minnesota	22,570	45,140	53.26	21,098	22,570	1,472	69,290	76,989	90.65	7,198	7,699	501	1,973
Mississippi	14,034	28,068	52.55	13,318	14,034	716	32,549	36,166	90.51	3,432	3,617	185	901
N. Hampshire	4,233	8,466	56.11	3,716	4,233	517	12,017	13,352	91.22	1,172	1,335	163	680
N. Carolina	22,367	44,734	53.06	20,998	22,367	1,369	21,912	24,347	90.61	2,286	2,435	149	1,518
S. Carolina	12,103	24,206	52.91	11,399	12,103	704	23,132	25,702	90.58	2,421	2,570	149	853
Tennessee	18,829	37,658	52.98	17,707	18,829	1,122	67,512	75,013	90.60	7,051	7,501	450	1,572
Virginia	19,443	38,886	54.21	17,806	19,443	1,637	81,413	90,459	90.84	8,286	9,046	760	2,397
W. Virginia	9,468	18,936	53.11	8,879	9,468	589	40,322	44,802	90.62	4,202	4,480	278	867
Wisconsin	21,048	42,096	52.54	19,979	21,048	1,069	23,689	26,321	90.51	2,498	2,632	134	1,203

Source: Based on data provided by the U.S. Bureau of Public Roads. Also, see notes on page 11 of Table No. R-2.

40

TABLE NO. R-2 (10 of 11)

"Loss" to 14 States of Highway Program Sliding Scale Benefits Because of Exclusion of National Forest, Park and Monument Acreage
1966

	Primary, Secondary, Urban Highway						Interstate Highway Programs						
				State Share						State Share			
State	Fed.Apportionment ($000) (1)	Total Program ($000) (2)	Fed.Proportion if Eligible (%) (3)	If Eligible ($000) (4)	If Ineligible ($000) (5)	Reduction ($000) (6)	Fed.Apportionment ($000) (7)	Total Program ($000) (8)	Fed.Proportion if Eligible (%) (9)	If Eligible ($000) (10)	If Ineligible ($000) (11)	Reduction ($000) (12)	Total Reduction in State Share ($000) (13)
Arkansas	13,136	26,272	54.64	11,917	13,136	1,219	29,226	32,473	90.93	2,945	3,247	302	1,521
Florida	22,271	44,542	54.84	20,115	22,271	2,156	57,927	64,363	90.97	5,812	6,436	624	2,780
Georgia	22,939	45,878	52.71	21,696	22,939	1,243	51,457	57,174	90.54	5,409	5,717	308	1,551
Hawaii	4,633	9,266	54.43	4,223	4,633	410	21,926	24,362	90.89	2,219	2,436	217	627
Michigan	33,469	66,938	54.48	30,470	33,469	2,999	108,803	120,892	90.90	11,001	12,089	1,088	4,087
Minnesota	23,802	47,604	53.26	22,250	23,802	1,552	72,222	80,247	90.65	7,503	8,025	522	2,074
Mississippi	14,946	29,892	52.55	14,184	14,946	762	33,927	37,697	90.51	3,577	3,770	193	955
N. Hampshire	4,366	8,732	56.11	3,832	4,366	534	12,525	13,917	91.22	1,222	1,392	170	704
N. Carolina	23,424	46,848	53.06	21,990	23,424	1,434	22,839	25,377	90.61	2,383	2,538	155	1,589
S. Carolina	12,727	25,454	52.91	11,986	12,727	741	24,111	26,790	90.58	2,524	2,679	155	896
Tennessee	20,227	40,454	52.98	19,021	20,227	1,206	70,369	78,188	90.60	7,350	7,819	469	1,675
Virginia	19,463	38,926	54.21	17,824	19,463	1,639	84,858	94,287	90.84	8,637	9,429	792	2,431
W. Virginia	9,880	19,760	53.11	9,265	9,880	615	42,028	46,698	90.62	4,380	4,670	290	905
Wisconsin	22,287	44,574	52.54	21,155	22,287	1,132	24,691	27,434	90.51	2,603	2,743	140	1,272

Source: Based on data provided by the U.S. Bureau of Public Roads. Also, see notes on page 11 of Table No. R-2.

"Loss" to 14 States of Highway Program Sliding Scale Benefits Because of Exclusion of National Forest, Park and Monument Acreage

TABLE NO. R-2 (11 of 11)

Notes: Data shown for those Non-Intense Public Land States which have more than five percent of their land in Federal ownership.

Column 1 and Column 7: U.S. Bureau of Public Roads, Apportionments of Federal Aid Highway Funds Authorized for the Fiscal Year, 1957-1966.

Column 2: Column 1 × 2.

Column 3: 50% plus one half the percent that Federal land area is of total land area (U.S. Department of the Interior, Public Land Statistics, 1957-1966).

Column 4: Column 2 multiplied by complement of Column 3.

Column 5: Column 2-Column 1.

Column 6: Column 5-Column 4.

Column 8: Column 7 divided by 90%.

Column 9: 90% plus one tenth the percent that Federal land area is of total land area (U.S. Department of the Interior, Public Land Statistics, 1957-1966).

Column 10: Column 8 multiplied by complement of Column 9.

Column 11: 10% of Column 8.

Column 12: Column 11-Column 10.

Column 13: Column 6 + Column 12

NA -- Not Available

2. ANALYSIS OF THE RECEIPTS TO THE RECLAMATION FUND BY STATE COMPARED TO RECLAMATION PROJECT EXPENDITURES IN THOSE STATES

I. Background

By the end of the nineteenth century, it had become clear that private and state financial efforts to develop the arid lands of the West were insufficient and that future settlement and development required the involvement of the Federal government.[1]

The Congressional rationale for establishing the Reclamation Fund can been seen in the following statement from the House Report on the bill:

> "It has been suggested that inasmuch as the States control the waters used in irrigation and have the highest possible interest in the development of the territory within their borders, they should undertake such works as are beyond the reach or scope of private enterprise. The answer to this is that it is utterly impossible for the States in the arid regions to undertake this class of work to any considerable extent, owing to lack of funds with which to carry then on, if for no other reason.
>
> "Of the sixteen States and Territories named in the bill, in all, save four, more than half of their area is owned by the National Government. In half of them Uncle Sam owns 85 per cent of all the land, while in four less than 8 per cent of all the lands are in private ownership and taxable....
>
> "It will be readily understood that with no source of revenue for the irrigation of these lands except ordinary taxation and with but a small portion of their lands taxable the states cannot, by any possibility, secure funds to carry on reclamation."[2]

The Reclamation Act,[3] as enacted, provided that:

1/ Hibbard, Benjamin H., A History of the Public Land Policies (Madison, University of Wisconsin Press 1956), p. 439.
2/ H. R. Rep. No. 794, 57th Cong., 1st Sess. 3-4 (1902).
3/ 32 Stat. 388 (1902).

> "... All moneys received from the sale and disposal of public lands in Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington and Wyoming, ... including the surplus of fees and commissions in excess of allowances to registers and receivers, and excepting the five per centum of the proceeds of the sales of public lands in the above States set aside by law for educational and other purposes, shall be and the same are hereby, reserved, set aside and appropriated as a special fund in the Treasury to be known as the 'Reclamation Fund,' ..."

Since the creation of the Reclamation Fund, Texas has been added to the list of States which may benefit from the Fund.[4]

A. The Reclamation Fund

At the present time, there are two kinds of receipts which flow into the Fund. These are known as indirect and direct collections. Indirect collections come from the activities of Federal agencies other than the Bureau of Reclamation and include (A) proceeds received under the provision of the Mineral Leasing Act,[5] (B) proceeds from the leasing of any withdrawn or reserved lands,[6] (C) proceeds from the disposal of materials, including timber, on reserved or withdrawn lands,[7] (D) proceeds from the sale of public lands,[8] and (E) proceeds from leases issued by the Federal Power Commission.[9]

Direct collections consist of revenues from the activities of the Bureau of Reclamation.[10] These receipts consist of such items as construction repayments, operation and maintenance repayments, power revenues from reclamation projects, water rentals, and proceeds from the sale of material utilized in connection with a project.[11] In addition, money received from States, municipalities, or private parties in connection with a reclamation project is also deposited in the Reclamation Fund.[12]

---

[4] 34 Stat. 259 (1906).
[5] 30 U.S.C. § 191 (1964).
[6] 43 U.S.C. § 394 (1964).
[7] Ibid.
[8] 43 U.S.C. § 391 (1964).
[9] 16 U.S.C. § 810 (1964).
[10] 43 U.S.C. § 392a (1964).
[11] 43 U.S.C. § 393 (1964) - The proceeds from the operation of Boulder Dam have been excluded from the Reclamation Fund. 45 Stat. 1057 (1928).
[12] 43 U.S.C. § 395 (1964).

B. Administration

Prior to the appropriation of any funds to initiate construction of a project, the Secretary of the Interior must certify to Congress that the project has been surveyed and is feasible.[13]

Expenditures from the Reclamation Fund may be made only on authorization of appropriations by Congress. Congress so appropriates annually, except for minor permanent authorizations.[14] It is the present practice of the Congress to appropriate from the Reclamation Fund each year sufficient funds to meet the costs of the approved programs for general investigations, operation and maintenance, general administrative expenses and the emergency fund, except for certain items allocated to the Colorado River Dam Fund or to the General Fund.[15] After providing for the appropriations, the approximate balance in the Fund on June 30, prior to the fiscal year of appropriation, is applied to the construction and rehabilitation appropriation. The difference between the amount available in the Fund and total appropriated for construction and rehabilitation is derived from the General Fund.[16] The Colorado River Storage Project receives a separate appropriation for advance planning and construction which is entirely derived from the General Fund of the Treasury.

The practice of combining appropriations from the Reclamation Fund with those emanating from the General Fund of the Treasury in order to support the programs of the Bureau of Reclamation has been characteristic of the Reclamation Fund since its inception. The reason for this practice is that Reclamation Fund receipts have not been of sufficient magnitude to finance all the activities of the Reclamation Bureau. For example, for the 10-year period 1957 to 1966 the total net expenditures[17] for reclamation projects in those states which had such programs exceeded the total indirect and direct collections received from those states by approximately $158,597,390[18] or about $15.8 million per year.

Tables R-3 and R-4 appended contain an analysis of the annual receipts and expenditures by state. The method employed in assembling the figures shown in these two tables is explained in the page following Table R-4. Due to the

---

[13] 43 U.S.C. § 390 (1964).

[14] Permanent authorizations include (a) payment to Farmers Irrigation Districts, (b) payments to local units, Klamath Reclamation Area, (c) payments of claims, and (d) repayment of loans.

[15] 79 Stat. 1100,1101 (1965).

[16] *Ibid.*

[17] Net expenditures represent accrued expenditures less reimbursements.

[18] Figure represents total project expenditures by state for the 10-year period 1957-1966 exclusive of project expenditures for Colorado River Storage Basin, Missouri River Basin Project, Emergency Repairs, Disaster Relief, and General Activities which cannot be allocated among these states. For data sources and method of computation see last page of Table R-4.

SUMMARY OF RECEIPTS TO AND EXPENDITURES FROM THE RECLAMATION FUND BY STATE
1957 - 1966

TABLE NO. R-3

	Total Collections	Total Expenditures	Excess Expenditures
Arizona	$ 16,091,654	$ 91,323,386	$ 75,231,732
Alaska	16,180	4,854,050	4,837,870
California	131,548,738	526,853,955	395,305,217
Colorado	121,778,768	60,685,237	(61,093,531)
Idaho	15,532,420	54,281,729	38,749,309
Kansas	3,718,829	13,684,146	9,965,317
Montana	61,895,266	12,618,275	(49,276,991)
Nebraska	217,906	5,587,946	5,370,040
Nevada	23,312,091	58,257,153	34,945,062
New Mexico	270,979,312	51,927,591	(219,051,721)
North Dakota	4,655,404	303,015	(4,352,389)
Oklahoma	2,316,937	49,349,418	47,032,481
Oregon	26,535,570	52,229,304	25,693,734
South Dakota	3,155,168	5,297	(3,149,871)
Texas	--	91,574,805	91,574,805
Utah	103,573,002	94,448,947	(9,124,055)
Washington	4,213,966	166,983,362	162,769,396
Wyoming	417,786,395	40,286,940	(377,499,455)
Arkansas	1,428,361	--	(1,428,361)
Iowa	--	--	--
Louisiana	4,407,924	--	(4,407,924)
Minnesota	312	--	(312)
Missouri	5	--	(5)
Other States & Puerto Rico	377,318	--	(377,318)
Undesignated	3,115,640	--	(3,115,640)
Grand Total	$ 1,216,657,166	$ 1,375,254,556	$ 158,597,390

Source: Table No. R-4

RECEIPTS TO AND EXPENDITURES FROM THE RECLAMATION FUND BY STATE
1957 - 1966

TABLE NO. R-4 1 of 5

States	1957 Direct Collections	1957 Indirect Collections	1957 Total	1957 Expenditures	1957 Excess Expenditures	1958 Direct Collections	1958 Indirect Collections	1958 Total	1958 Expenditures	1958 Excess Expenditures
Arizona	$ 382,548	$ 247,330	$ 629,878	$ 9,675,543	$9,045,665	$ 649,106	$ 923,357	$ 1,572,463	$ 6,992,737	$ 5,420,274
Alaska	568	367	935	213,040	212,105	457	650	1,107	293,505	292,398
California	8,598,917	5,559,486	14,158,403	28,110,778	13,952,375	4,366,533	6,211,415	10,577,948	46,840,227	36,262,279
Colorado	9,600,495	6,207,039	15,807,534	2,530,929	(13,276,605)	4,555,065	6,479,602	11,034,667	1,257,953	(9,776,714)
Idaho	712,630	460,739	1,173,369	14,754,502	13,581;133	483,394	687,630	1,171,024	11,248,521	10,077,497
Kansas	87,443	56,535	143,978	--	(143,978)	48,509	69,004	117,513	923	(116,590)
Montana	2,814,346	1,819,568	4,633,914	897,958	(3,735,956)	1,620,286	2,304,864	3,925,150	2,019,286	(1,905,864)
Nebraska	23,713	15,331	39,044	620,681	581,637	5,996	8,529	14,525	467,993	453,468
Nevada	1,674,936	1,082,902	2,757,838	6,051,713	3,293,875	386,399	549,654	936,053	5,810,090	4,874,037
New Mexico	10,525,032	6,804,783	17,329,815	10,626,395	(6,703,420)	6,618,389	9,414,690	16,033,079	4,841,423	(11,191,656)
North Dakota	154,864	100,125	254,989	71,659	(183,330)	99,174	141,076	240,250	--	(240,250)
Oklahoma	49,021	31,694	80,715	2,000	(78,715)	27,200	38,692	65,892	386,462	320,570
Oregon	1,514,329	979,064	2,493,393	1,003,061	(1,490,332)	524,948	746,741	1,271,689	2,775,760	1,504,071
South Dakota	194,041	125,454	319,495	5,297	(314,198)	96,999	137,981	234,980	--	(234,980)
Texas	--	--	--	15,000	15,000	--	--	--	--	--
Utah	3,614,581	2,336,947	5,951,528	9,297,431	3,345,903	2,116,446	3,010,655	5,127,101	798,777	(4,328,324)
Washington	585,073	378,269	963,342	18,687,409	17,724,067	188,841	268,627	457,468	23,875,914	23,418,446
Wyoming	20,384,426	13,179,209	33,563,635	2,183,330	(31,380,305)	10,995,944	15,641,785	26,637,729	2,497,461	(24,140,268)
Arkansas	9,025	5,835	14,860	--	(14,860)	7,567	10,764	18,331	--	(18,331)
Iowa	--	--	--	--	--	--	--	--	--	--
Louisiana	193,668	125,213	318,881	--	(318,881)	136,435	194,079	330,514	--	(330,514)
Minnesota	12	8	20	--	(20)	10	14	24	--	(24)
Missouri	--	--	--	--	--	--	--	--	--	--
Other States & Puerto Rico	16,505	10,670	27,173	--	(27,173)	6,268	8,916	15,184	--	(15,184)
Undesignated	136,864	88,487	225,351	--	(225,351)	110,196	156,755	266,951	--	(266,951)
Total	$61,273,035	$39,615,055	$100,888,090	$104,746,726	$3,858,636	$33,044,162	$47,005,480	$80,049,642	$110,107,032	$30,057,390

Source: See page following Table R-4, 5 of 5

RECEIPTS TO AND EXPENDITURES FROM THE RECLAMATION FUND BY STATE
1957 - 1966

TABLE NO. R-4 2 of 5

	1959					1960				
States	Direct Collections	Indirect Collections	Total	Expenditures	Excess Expenditures	Direct Collections	Indirect Collections	Total	Expenditures	Excess Expenditures
Arizona	$ 1,214,784	$ 775,212	$ 1,989,996	$ 6,696,254	$ 4,706,258	$ 2,096,552	$ 1,605,727	$ 3,702,279	$ 5,337,398	$ 1,635,119
Alaska	1,255	801	2,056	490,425	488,369	843	646	1,489	369,413	367,924
California	9,172,861	5,853,641	15,026,502	62,821,324	47,794,822	8,051,639	6,166,666	14,218,305	64,379,431	50,161,126
Colorado	8,633,910	5,509,711	14,143,621	3,070,356	(11,073,265)	7,063,839	5,410,120	12,473,959	4,803,472	(7,670,487)
Idaho	748,377	477,575	1,225,952	7,867,429	6,641,477	605,841	464,007	1,069,848	4,429,577	3,359,729
Kansas	136,616	87,181	223,797	--	(223,797)	190,259	145,717	335,976	--	(335,976)
Montana	3,760,079	2,399,486	6,159,565	828,149	(5,331,416)	3,536,498	2,708,567	6,245,065	832,367	(5,412,698)
Nebraska	9,904	6,320	16,224	384,044	367,820	12,538	9,603	22,141	503,967	481,826
Nevada	1,486,988	948,918	2,435,906	6,143,902	3,707,996	971,538	744,091	1,715,629	9,399,868	7,684,239
New Mexico	13,745,350	8,771,565	22,516,915	3,888,241	(18,628,674)	12,619,546	9,665,178	22,284,724	3,590,732	(18,693,992)
North Dakota	188,610	120,361	308,971	--	(308,971)	150,351	115,152	265,503	52,989	(212,514)
Oklahoma	148,555	94,800	243,355	3,324,983	3,081,628	71,842	55,023	126,865	7,300,681	7,173,816
Oregon	1,521,574	970,989	2,492,563	9,050,108	6,557,545	1,633,968	1,251,439	2,885,407	10,082,786	7,197,379
South Dakota	198,073	126,400	324,473	--	(324,473)	155,674	119,228	274,902	--	(274,902)
Texas	--	--	--	--	--	--	--	--	601,795	601,795
Utah	5,202,267	3,319,815	8,522,082	5,746,032	(2,776,050)	4,970,837	3,807,112	8,777,949	6,534,753	(2,243,196)
Washington	432,174	275,791	707,965	21,958,637	21,250,672	395,511	302,918	698,429	16,031,268	15,332,839
Wyoming	25,742,179	16,427,315	42,169,494	2,775,085	(39,394,409)	22,294,571	17,075,178	39,369,749	2,147,892	(37,221,857)
Arkansas	37,670	24,039	61,709	--	(61,709)	50,294	38,520	88,814	--	(88,814)
Iowa	--	--	--	--	--	--	--	--	--	--
Louisiana	229,923	146,725	376,648	--	(376,648	251,000	192,238	443,238	--	(443,238)
Minnesota	27	17	44	--	(44)	18	14	32	--	(32)
Missouri	--	--	--	--	--	--	--	--	--	--
Other States & Puerto Rico	13,773	8,789	22,562	--	(22,562)	10,282	7,875	18,157	--	(18,157)
Undesignated	302,579	193,090	495,669	--	(495,669)	203,558	155,903	359,461	--	(359,461
Total	$72,927,528	$46,538,541	$119,466,069	$135,044,969	$15,578,900	$65,336,999	$50,040,922	115,377,921	$136,398,389	$21,020,468

TABLE NO. R-4 3 of 5

RECEIPTS TO AND EXPENDITURES FROM THE RECLAMATION FUND BY STATE
1957 - 1966

States	1961					1962				
	Direct Collections	Indirect Collections	Total	Expenditures	Excess Expenditures	Direct Collections	Indirect Collections	Total	Expenditures	Excess Expenditures
Arizona	$ 1,288,776	$ 958,387	$ 2,247,163	$ 8,285,435	$ 6,038,272	$ 854,638	$ 677,495	$ 1,532,133	$ 10,442,490	$ 8,910,357
Alaska	711	529	1,240	277,381	276,141	508	403	911	591,402	590,491
California	7,790,965	5,793,685	13,584,650	53,380,206	39,795,556	7,211,329	5,716,620	12,927,949	49,883,019	36,955,070
Colorado	7,109,983	5,287,279	12,397,262	6,995,825	(5,401,437)	6,162,949	4,885,541	11,048,490	9,869,773	(1,178,717)
Idaho	1,005,224	747,526	1,752,750	3,366,782	1,614,032	694,488	550,540	1,245,028	3,144,193	1,899,165
Kansas	255,142	189,734	444,876	--	(444,876)	266,522	211,279	477,801	97,317	(380,484)
Montana	3,238,016	2,407,923	5,645,939	3,613,654	(2,032,285)	3,312,934	2,626,255	5,939,189	861,160	(5,078,029)
Nebraska	13,509	10,046	23,555	467,836	444,281	20,101	15,935	36,036	513,608	477,572
Nevada	1,106,053	822,508	1,928,561	7,440,639	5,512,078	1,820,549	1,443,200	3,263,749	8,503,485	5,239,736
New Mexico	15,374,678	11,433,249	26,807,927	3,061,247	(23,746,680)	16,757,952	13,284,494	30,042,446	4,276,565	(25,765,881)
North Dakota	160,653	119,468	280,121	43,015	(237,106)	176,383	139,824	316,207	56,599	(259,608)
Oklahoma	98,250	73,063	171,313	7,779,910	7,608,597	147,798	117,163	264,961	6,104,029	5,841,068
Oregon	1,628,797	1,211,241	2,840,038	6,621,612	3,781,574	1,383,172	1,096,479	2,479,651	7,144,913	4,665,262
South Dakota	132,688	98,672	231,360	--	(231,360)	90,204	71,507	161,711	--	(161,711)
Texas	--	--	--	3,302,481	3,302,481	--	--	--	14,004,993	14,004,993
Utah	5,310,969	3,949,457	9,260,426	7,375,395	(1,885,031)	5,194,559	4,117,870	9,312,429	8,358,831	(953,598)
Washington	342,372	254,602	596,974	12,562,878	11,965,904	217,033	172,048	389,081	13,623,200	13,234,119
Wyoming	23,980,832	17,833,143	41,813,975	1,717,930	(40,096,045)	23,823,514	18,885,561	42,709,075	1,932,037	(40,777,038)
Arkansas	55,625	41,365	96,990	--	(96,990)	100,213	79,442	179,655	--	(179,655)
Iowa	--	--	--	--	--	--	--	--	--	--
Louisiana	166,754	124,005	290,759	--	(290,759)	208,788	165,512	374,300	--	(374,300)
Minnesota	15	11	26	--	(26)	10	8	18	--	(18)
Missouri	--	--	--	--	--	1	1	2	--	(2)
Other States & Puerto Rico	10,757	7,999	18,756	--	(18,756)	18,667	14,798	33,465	--	(33,465)
Undesignated	171,749	127,720	299,469	--	(299,469)	122,732	97,293	220,025	--	(220,025)
Total	$69,242,518	$51,491,612	$120,734,130	$126,292,226	$ 5,558,096	$68,585,044	$54,369,268	$122,954,312	$139,409,614	$16,455,302

RECEIPTS TO AND EXPENDITURES FROM THE RECLAMATION FUND BY STATE
1957 - 1966

States	1963 Direct Collections	1963 Indirect Collections	1963 Total	1963 Expenditures	1963 Excess Expenditures	1964 Direct Collections	1964 Indirect Collections	1964 Total	1964 Expenditures	1964 Excess Expenditures
Arizona	$ 639,045	$ 524,734	$ 1,163,779	$ 8,033,177	$ 6,869,398	$ 735,704	$ 562,979	$ 1,298,683	$ 7,948,915	$ 6,650,232
Alaska	807	663	1,470	(15,631)	(17,101)	1,211	927	2,138	289,677	287,539
California	6,183,781	5,077,639	11,261,420	62,038,887	50,777,467	6,993,222	5,351,390	12,344,612	60,702,295	48,357,683
Colorado	5,801,631	4,763,847	10,565,478	8,984,927	(1,580,551)	6,561,366	5,020,923	11,582,289	6,592,604	(4,989,685)
Idaho	918,738	754,396	1,673,134	2,551,537	878,403	1,168,664	894,291	2,062,955	3,109,710	(1,046,755)
Kansas	265,561	218,058	483,619	2,464,492	1,980,873	305,761	233,976	539,737	6,148,670	5,608,933
Montana	3,715,169	3,050,607	6,765,776	736,974	(6,028,802)	3,972,975	3,040,221	7,013,196	1,008,775	(6,004,421)
Nebraska	15,397	12,643	28,040	632,619	604,579	12,893	9,866	22,759	668,925	646,166
Nevada	1,334,747	1,095,990	2,430,737	5,962,223	3,531,486	1,449,373	1,109,097	2,558,470	--	(2,558,470)
New Mexico	16,349,492	13,424,928	29,774,420	4,117,824	(25,656,596)	17,971,575	13,752,303	31,723,878	2,771,528	(28,952,350)
North Dakota	656,644	539,185	1,195,829	--	(1,195,829)	348,342	266,560	614,902	--	(614,902)
Oklahoma	124,094	101,896	225,990	5,087,409	4,861,419	162,048	124,003	286,051	5,746,531	5,460,480
Oregon	1,671,610	1,372,596	3,044,206	3,170,069	125,863	1,769,120	1,353,775	3,122,895	4,341,913	1,219,018
South Dakota	169,892	139,502	309,394	--	(309,394)	221,232	169,292	390,524	--	(390,524)
Texas	--	--	--	16,363,743	16,363,743	--	--	--	16,677,099	16,677,099
Utah	10,436,385	8,569,546	19,005,931	9,795,180	(9,210,751)	7,002,849	5,358,757	12,361,606	13,417,962	1,056,356
Washington	55,592	45,648	101,240	14,246,765	14,145,525	48,128	36,829	84,957	13,827,621	13,742,664
Wyoming	23,435,438	19,243,355	42,678,793	5,483,259	(37,195,534)	26,597,169	20,352,825	46,949,994	7,326,941	(39,623,053)
Arkansas	156,230	128,284	284,514	--	(284,514)	166,376	127,315	293,691	--	(293,691)
Iowa	--	--	--	--	--	--	--	--	--	--
Louisiana	201,842	165,737	367,579	--	(367,579)	335,946	257,074	593,020	--	(593,020)
Minnesota	17	14	31	--	(31)	25	19	44	--	(44)
Missouri	--	--	--	--	--	--	--	--	--	--
Other States & Puerto Rico	22,192	18,222	40,414	--	(40,414)	40,962	31,345	72,307	--	(72,307)
Undesignated	194,712	159,882	354,594	--	(354,594)	292,162	223,570	515,732	--	(515,732)
Total	$72,349,016	$59,407,372	$131,756,388	$149,653,454	$17,897,066	$76,157,103	$58,277,337	$134,434,440	$150,579,166	$16,144,726

RECEIPTS TO AND EXPENDITURES FROM THE RECLAMATION FUND BY STATE
1957 - 1966

TABLE NO. R-4 5 of 5

States	1965 Direct Collections	1965 Indirect Collections	1965 Total	1965 Expenditures	1965 Excess Expenditures	1966 Direct Collections	1966 Indirect Collections	1966 Total	1966 Expenditures	1966 Excess Expenditures
Arizona	$ 617,887	$ 522,829	$ 1,140,716	$ 11,584,029	$10,443,313	$ 508,679	$ 305,885	$ 814,564	$ 16,327,408	$15,512,844
Alaska	850	719	1,569	866,177	860,608	2,039	1,226	3,265	1,478,661	1,475,396
California	7,154,523	6,053,843	13,208,366	48,017,356	34,808,990	8,892,958	5,347,625	14,240,583	50,680,432	36,439,849
Colorado	5,740,507	4,857,365	10,597,872	6,192,992	(4,404,880)	7,573,440	4,554,156	12,127,596	10,386,406	(1,741,190)
Idaho	1,179,134	997,731	2,176,865	2,110,779	(66,086)	1,237,404	744,091	1,981,495	1,698,699	(282,796)
Kansas	205,573	173,947	379,520	3,327,661	2,948,141	357,210	214,802	572,012	1,645,083	1,073,071
Montana	3,702,665	3,133,032	6,835,697	956,053	(5,879,644)	5,452,818	3,278,957	8,731,775	863,899	(7,867,876)
Nebraska	5,733	4,851	10,584	816,184	805,600	3,121	1,877	4,998	512,089	507,091
Nevada	1,206,579	1,020,954	2,227,533	309,488	(1,918,045)	1,909,419	1,148,196	3,057,615	8,635,745	5,578,130
New Mexico	17,042,797	14,420,866	31,463,663	5,151,251	(26,312,412)	26,854,163	16,148,282	43,002,445	9,602,385	(33,400,060)
North Dakota	297,442	251,682	549,124	78,753	(470,371)	393,115	236,393	629,508	--	(629,508)
Oklahoma	182,283	154,240	336,523	7,485,559	7,149,036	321,777	193,495	515,272	6,129,854	5,614,582
Oregon	1,148,933	972,177	2,121,110	3,843,395	1,722,285	2,363,418	1,421,200	3,784,618	4,195,687	411,069
South Dakota	254,351	215,221	469,572	--	(469,572)	273,995	164,762	438,757	--	(438,757)
Texas	--	--	--	20,034,765	20,034,765	--	--	--	20,574,929	20,574,929
Utah	6,235,126	5,275,889	11,511,015	13,369,576	1,858,561	8,582,187	5,160,748	13,742,935	19,755,010	6,012,075
Washington	33,790	28,592	62,382	14,442,642	14,380,260	95,001	57,127	152,128	17,727,028	17,574,900
Wyoming	24,939,578	21,102,775	46,042,353	6,688,206	(39,354,147)	34,878,201	20,973,397	55,851,598	7,534,799	(48,316,799)
Arkansas	128,693	108,894	237,587	--	(237,587)	95,052	57,158	152,210	--	(152,210)
Iowa	--	--	--	--	--	--	--	--	--	--
Louisiana	305,052	258,122	563,174	--	(563,174)	468,242	281,569	749,811	--	(749,811)
Minnesota	18	15	33	--	(33)	25	15	40	--	(40)
Missouri	--	--	--	--	--	2	1	3	--	(3)
Other States & Puerto Rico	32,482	27,485	59,967	--	(59,967)	43,297	26,036	69,333	--	(69,333)
Undesignated	204,960	173,428	378,388	--	(378,388)	--	--	--	--	--
Total	$70,618,956	$59,754,657	$130,373,613	$145,274,866	$14,901,253	$100,305,563	$60,316,998	$160,622,561	$177,748,114	$17,125,553

Data Sources and Methodology Applied in the Development of Table R-4, Receipts to and Expenditures from Reclamation Fund by State, 1957-1966

DATA SOURCES: Summary Report of the Commissioner, Bureau of Reclamation, 1956 and 1966, Statistical Appendix, Parts I, II and III, USDI. Direct Collections: Source and Disposition of the Reclamation Fund. Indirect Collections: Indirect Collections to the Reclamation Fund. Expenditures: Reclamation Project Expenditures by State.

METHODOLOGY

Direct Collections: Data for direct collections by state are not available. In order to provide an allocation of the direct collections by state, they have been allocated in the same proportion in which indirect collections have accrued to the Fund by state and year.

Because annual direct collections are not shown in published data but cumulative totals are shown each year, to arrive at annual figures, a process of subtracting the cumulative figures for 1965 from those for 1966 was applied and, likewise, for all other years.

Indirect Collections: Indirect collections to the Fund represent income from several sources. Some of these were reported annually by state of origin while others were not. Moreover, the compilation of data was changed in 1965 and subsequent years when cumulative totals only were shown though previously annual accretions were shown. For the years 1965 and 1966 the annual accretion was derived by a method of subtracting the cumulative totals for the previous year.

The items reflecting indirect collections by state were first recorded. Then the other indirect collections, those which were not shown by state of origin, were allocated to each state in the same proportion in which the previously mentioned indirect collections were recorded.

Expenditures: Expenditures by state reflect total project expenditures less reimbursements. These data are mentioned on a cumulative basis by state. In order to obtain annual totals, a procedure similar to that for direct collections was used, namely the subtraction of the cumulative totals for the previous year from those of the succeeding year.

However, no expenditure distribution by state is available for certain projects and activities and, consequently, these are not reflected in the expenditures shown in Tables R-3 and R-4. These projects and activities include the Colorado River Storage, Missouri Basin Project, Emergency Repair and Disaster Relief, and a category entitled General Activities. The exclusion of these projects and activities results in a showing of smaller state totals, the overall magnitude for the 10-year period being as follows:

Missouri Basin Project	$ 486 million
Colorado River Storage	470 million
Emergency Repair and Disaster Relief	3 million
General Activities	121 million
Total	$1,080 million

necessity of allocating direct collections -- their state origins are not available from any published source -- the figures derived are approximations. Of course, they exclude the appropriations to the Fund from the General Fund of the Treasury. The latter are not germane to the purpose herein, e.g. an analysis of the relationship of state-by-state collections and expenditures.

The examination of this issue, reclamation project expenditures versus Reclamation Fund receipts on a state-by-state basis, shows that in five of the seven states from which the largest contributions to the Fund originated, expenditures were less than the estimated collection for the 1957-1966 period. These five states are Wyoming, New Mexico, Colorado, Utah and Montana. On the other hand, in California, the third largest contributor of revenues to the Fund, expenditures for reclamation projects during the 1957 to 1966 period were four times as large as contributions during the same time span. These expenditures in California represented 38% of the total project expenditures in all project states for the entire 1957 to 1966 period. In Oregon, the seventh largest contributor state to the Fund, twice as large project expenditures were made during the 1957 to 1966 period as had been returned to the Fund in the way of revenue.

The magnitude of the annual excess of project expenditures to receipts into the Reclamation Fund varied from a low of $3.8 million in 1957 to as high a figure as $30 million in 1958. In six of the remaining eight years an excess of project expenditures to receipts ranging from $14.9 million to $17.1 million resulted. In 1961 the deficit amounted to $5.5 million and in 1960 it was $21 million.

The importance of General Fund appropriations as supplements to the direct and indirect collections of the Reclamation Fund in supporting the activities of the Bureau of Reclamation is evident from the following figures: For fiscal year 1967 the General Fund appropriation provided approximately 50% of the funds ($97.375 million) for construction and rehabilitation activities, approximately 23% ($9.456 million) for operation and maintenance activities, and 100% of the financing for the Bureau's loan program to irrigation districts and other public agencies for construction of irrigation distribution systems and to local organizations for development of small reclamation projects. (Of course, the General Fund also provided almost the entire funding for Upper Colorado River Basin expenditures, amounting to over $46 million.)

As long as the Bureau of Reclamation continues its activities in areas requiring large money outlays for construction and rehabilitation, which in the fiscal year 1967 accounted for 63% of the appropriated revenues from the Reclamation Fund and for 59% of the total appropriation to the Bureau, it would appear that the Bureau's dependency upon the General Fund of the Treasury will continue, at least for the immediate future. Direct and indirect

15

collections to the Reclamation Fund have increased from 1957 to 1966 by about 60%. It seems, however, that these collections will not soon suffice to support the programs of the Bureau of Reclamation.

It might be added that in March, 1968, the Bureau of Reclamation reported that of the $5.5 billion expended during the last decade in plant, property, equipment and corollary costs, about $1 billion had been repaid in project revenues, a repayment rate of about 17%. The Bureau also mentioned in this report that of its total authorized construction program of $9 billion, just under $8 billion will be returned by project beneficiaries.

3. ANALYSIS OF THE TENNESSEE VALLEY AUTHORITY - PAYMENTS IN LIEU OF TAXES

I. Background

The PILT provisions applying to the TVA[1] contain a fundamental difference as compared with all other PILT and RS statutes and must therefore be analyzed and evaluated separately. Whereas several of the PILT statutes provide for a straight payment of the ad valorem taxes lost to local and state governments by the immunity of Federal property to state and local taxation, and while the RS statutes provide for sharing of gross or net revenues at a specified rate, the TVA statute, in a way, represents a combination of typical PILT and RS statutes (Note: Fixed yearly payments are also made by the Boulder Canyon project - the Hoover Dam - to the states of Arizona and Nevada).

The TVA legislation specifies that the Authority make payments in lieu of taxes which shall not be less than $10,000 in any state in which the Authority has properties and/or sells electricity or the equivalent of the 2-year average of the state and local taxes assessed on the land immediately prior to its acquisition by the TVA. The statute also provides that the Authority's payments shall aggregate 5% of its gross revenues from the sale of power excluding revenues from the sale of power to Federal agencies. While the 5% revenue share includes the amounts due for property tax as of the time the lands were acquired, the total annual payment, under this system, increases (or decreases) in direct proportion to the growth (or decline) of power revenues.

As pointed out in the legal study section of this report, local units of government may raise the rate of taxation on the Federal property but may not revalue the Federal property to take into account any improvements made thereon.

The formula for distribution of the 5% gross revenues among the various counties and states is based on:

1. The payment in lieu of taxes mentioned before, and
2. The balance of available funds within the 5 percent revenue restriction divided among the states as follows:

> One-half of the annual amount is divided in the same proportion that the investment in TVA's power property in each state bears to the total investment in TVA's power property and the remaining half is divided in

---

[1] 16 U.S.C. § 831l (1964).

the same proportion that TVA's power revenues in each state bear to TVA's total power revenues (excluding those from sale of electricity to Federal agencies)

A. History of Payments, TVA

During the 10-year period 1957-1966, the payment on account of the former ad valorem taxes have remained constant (there is a very slight variation among several of the years, the 1957 total amounted to $1,334,577 as compared with the 1966 payment of $1,333,130).

Conversely, the excess of percentage payment over the minimum payment has risen sharply. While this item amounted to $4,744,400 in 1957, it has increased in 1966 to $10,446,594. Enclosed Table No. TVA-1 shows payments to states, counties, municipalities and districts for each of the years 1957-1966.

The rate of increase for the first five-year period was 42.1%, for the second five-year period 55.0%, and for the 10-year period a rate of increase of 120.2% has resulted.

It is evident that the increased activity of the Authority, in terms of power sales to nonfederal customers, has benefited state and local government at a substantial rate.

B. Tax Payments by Electric Distribution Facilities

In addition to the payments made by the TVA directly, state and local taxes are paid by the 159 local distribution systems (except those in TVA ownership which make payments in lieu of taxes). Because privately owned utility companies typically provide their own retail distribution, the distribution facilities used and/or owned by them are taxed in the same manner as their power generating properties. Therefore, in order to obtain a comparable analysis between the TVA system and privately owned companies, tax revenues accruing from the TVA system affiliated distribution network must also be included on the TVA side. Put differently, if the TVA were in private ownership it would be taxed on the basis of retail power revenues (plus ad valorem). The combined tax and in lieu of tax payments by the TVA and its distributor network represent that equivalent.

The wholesale power contracts between TVA and the municipally owned electric systems provide for the payments in lieu of taxes by the latter. The annual payments "are designed to represent a fair share of the cost of local government", however, they may not exceed a maximum determined by applying the state, county, city, and other local district property tax rates to the net book cost of the electric system's properties in the respective taxing jurisdictions. This limitation is a liberal one in that it permits taxation at 100% of actual value and thereby permits payment of ad valorem taxes which are substantially higher than those which would be paid by privately owned properties. The latter are assessed at a rate which is typically between 30% and 50% of the property's market value or their depreciated book values. Privately owned distribution such as rural electric cooperatives pay property and gross revenue taxes in accordance with the various state laws applicable to this kind of ownership.

The municipal and cooperative electric systems distributing TVA power paid, in addition to those amounts paid by TVA itself, approximately $17.7 million in 1966, thus resulting in a combined total of more than $28 million in 1966. Details of the state and local tax payments by TVA's distributors are shown in line two of Table No. TVA-2. These distributor payments have substantially exceeded TVA's payments in lieu of taxes in each of the 10 years.

C Comparative Analysis

To gain an impression of the equity of the TVA combined PILT and RS provision, one must compare it with the tax payments which are required of privately owned electric utilities. These firms typically pay a variety of taxes, other than Federal income taxes, which include property, gross receipts and various franchise taxes. The enclosed Table No. TVA-3 shows state and local taxes paid as a percent of electric operating revenues by selected private electric utilities operating in the same states as the TVA. These 10 companies in 1966 had combined operating revenues of $1,350 million as compared with TVA's and its distributors' computed revenues of $393.9 million. The table shows that for 1966 these companies paid to state and local governments an average of 8.5% of their gross electric power revenues. The corresponding figures for 1962 and 1957 are 8.4% and 8.7% respectively. It should also be noted that in 1966 only one company, Kentucky Utility Company, one of the smaller properties, paid a lesser share of its gross electric power revenues than the 5% paid by TVA directly. All other companies paid within a range from 6.3% to 11.2% of their gross electric power sales. The variance in the level of payments between different properties reflects, of course, the difference in tax laws and rates in the various states and localities as well as the varying ratios of properties' sales to assessed values.

It might also be noted that nationally state and local taxes paid by electric utilities equaled 10.5% of operating revenues in 1966 and totaled $1,447 million. In addition, these companies also paid 11.6% of their operating revenues in Federal taxes, amounting to $1,597 million.[1]

---

[1] Source: Edison Electric Institute.

Leaving aside that these companies, in addition to the taxes shown in the enclosed table, also paid Federal income taxes, the figures here indicate that their operations provide a substantially greater tax benefit to the states and localities in which they operate than the existing TVA PILT formula. The 1966 figures indicate a disparity between the direct payments by TVA and the private companies equal to 3.5% of gross operating revenues; when applied to the TVA revenues from the sale of electric power this amounts to $7,312,615 or 70% more than the amounts TVA actually paid.

As stated, this "narrow" comparison - though proper in terms of the PILT provisions applicable to the TVA - is improper since due to the uniqueness of TVA's system and methods of operation, its system of distribution and their tax and payments in lieu of taxes must be considered as an integral part of the effective TVA PILT program.

As mentioned, the TVA distributors pay taxes or payments in lieu of taxes in amounts which substantially exceed TVA's direct payments. On line three of Table No. TVA-2 the combined payments are shown. When these payments are compared with the combined net revenues on line seven of this table the resulting percentage is 7.2 for 1966, as opposed to the 5% paid by TVA directly and the 8.5% paid by the privately owned electric utilities.

D. Findings

When the TVA direct PILT and RS payments are considered within the "narrow" framework of this statutory provision, they compare most unfavorably with the tax payments levied upon privately owned electric utilities. However, when the scope of analysis is expanded to include tax and payments in lieu of taxes made by the TVA associated distributor network, the figures show a relatively small inequity as compared with privately owned companies. The difference in total payments to states and their units of local government in 1966 amounted to, as stated, 7.2% for the TVA and 8.5% for the private companies. In absolute terms this difference is equal to $5.28 millon or 18.72% of the combined TVA distributor payments. Admittedly, such a difference is quite considerable and can only be justified, or called equitable, if the many other benefits the TVA system provides to the economies of the various states are also reflected upon. These, however, are beyond the scope of this study and, in a way, extraneous to the parameters of this analysis.

It should be noted also that the rate of increase in gross revenues for the TVA has out-paced those of the private companies, the rates for the latter being 33.8% in the 1957-1962 period, 33.6% in the 1962-1966 period and 78.9% over the 10-year period, as compared with TVA's 10-year rate of growth which exceeded 120%.

Due to the uniqueness of the PILT system attending to the TVA and its affiliated distributor network, the resulting payments to state-local governments reflect a much lesser disparity with the related private sector, i.e. the privately owned electric utilities, than was found in any of the geographically broadly based PILT or RS systems. Except for some local advantages from Federal as compared with private-land ownership, the disparity is usually much greater than was found to exist here.

The 1966 payment to states and counties equaled \$14.35 per acre of land under TVA's jurisdiction; this level of payment can be compared with the estimated property tax collections from private lands in 1966 of \$18.64 or the payments from PILT and RS programs, including the direct payments of the TVA, on Section 10 lands amounting to an average of 13¢/acre (figures from Table No. A-18, Part 3, Volume No. 1 of this report). Though, as shown here, average property tax collections per acre of privately owned lands exceeded the combined TVA in lieu tax payments (direct plus indirect) by almost 30%, TVA's payments per unit of land are immensely greater than the average for all PILT and RS programs.

TENNESSEE VALLEY AUTHORITY - PAYMENTS TO STATES AND COUNTIES IN LIEU OF TAXES FOR STATED YEARS, $000

		1957	1958	1959	1960	1961	1962	1963	1964	1965	1966
Alabama	minimum1/	64.6	64.5	64.0	63.8	63.7	63.6	63.3	62.6	62.5	62.3
	excess2/	766.3	844.0	957.9	1,131.9	1,289.4	1,377.3	1,539.4	1,738.0	1,934.9	2,133.7
	total	830 9	908.5	1,021.9	1,195.7	1,353.1	1,440.9	1,602.7	1,800.6	1,997.4	2,196.0
Georgia	minimum	64.2	64.2	64.0	63.9	63.9	63.9	63.9	63.9	63.9	63.8
	excess	-	-	-	-	-	-	3.1	10.8	21.1	30.6
	total	64.2	64.2	64.0	63.9	63.9	63.9	67.0	74.7	85.0	94.4
Illinois	minimum3/	-	-	-	-	-	-	-	-	-	10.0
	excess	-	-	-	-	-	-	-	-	-	-
	total	-	-	-	-	-	-	-	-	-	10.0
Kentucky	minimum	47.3	47.5	47.5	47.1	47.1	47.5	47.4	47.8	53.6	50.6
	excess	570.8	634.9	660.7	688.7	714.4	826.7	1,029.1	1,169.3	1,272.5	1,374.1
	total	618.1	682.5	708.2	735.8	761.5	874.2	1,076.5	1,217.1	1,326.0	1,424.7
Mississippi	minimum	46.3	46.1	46.1	46.0	46.0	45.9	45.9	45.9	45.9	45.9
	excess	89.4	109.5	129.2	157.8	189.3	213.5	236.8	278.1	319.6	408.1
	total	135.7	155.6	175.4	203.8	235.3	259.4	282.7	324.0	365.5	454.0
North Carolina	minimum	7.9	7.9	7.8	7.7	7.7	7.7	7.7	7.6	7.6	7.6
	excess	90.2	96.8	104.3	107.6	106.2	103.8	104.7	113.1	120.0	128.6
	total	98.1	104.7	117.1	115.3	113.9	111.5	112.4	129.7	127.6	136.2
Tennessee	minimum	1,102.6	1,101.8	1,087.7	1,086.4	1,086.2	1,086.3	1,087.7	1,089.0	1,095.9	1,091.3
	excess	1,877.8	2,235.9	2,709.9	2,889.4	2,840.4	2,878.3	3,068.4	3,557.7	4,020.1	5,007.1
	total	2,980.4	3,337.8	3,797.6	3,975.8	3,926.6	3,964.6	4,156.0	4,646.7	5,115.9	6,098.4
Virginia	minimum	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7
	excess	15.3	17.0	19.5	20.7	22.6	23.9	24.3	27.1	29.1	31.2
	total	17.0	18.6	21.2	22.4	24.3	25.6	26.0	28.7	30.8	32.9
All States	minimum	1,334.6	1,333.8	1,318.9	1,316.6	1,316.3	1,316.7	1,317.6	1,318.6	1,331.0	1,333.1
	excess	3,409.8	3,938.1	4,581.5	4,996.2	5,162.3	5,423.5	6,005.8	6,894.0	7,717.3	9,113.5
	total	4,744.4	5,271.9	5,900.4	6,312.8	6,478.6	6,740.2	7,323.4	8,212.6	9,048.3	10,446.6

Note: Totals may not add due to rounding.

Source: TVA.

1/ 100% of average county, district, municipal and state taxes on purchased power properties and reservoir lands for the two years preceding TVA acquisition.

2/ Excess of 5% gross power revenues over minimum payments, allocated to states on basis of average ratios of power revenues and power properties in these states.

3/ Statutory minimum payment.

TABLE NO. TVA-2

Calculation of Ratio of Combined TVA and Distributor Payments in Lieu of Taxes to Combined Operating Revenues Excluding TVA Sales to Federal Agencies

(Millions of Dollars)
Years 1957-1966

	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966
1. TVA in-lieu payments	4.7	5.3	5.9	6.3	6.5	6.7	7.3	8.2	9.1	10.5
2. Distributor in-lieu payments	7.6	8.5	8.9	10.0	10.9	11.9	13.1	14.6	16.0	17.7
3. Combined payments	12.3	13.8	14.8	16.3	17.4	18.6	20.4	22.8	25.1	28.2
4. TVA operating revenues	235.7	233.5	237.5	242.4	248.3	252.1	268.8	286.4	296.0	326.8
5. Distributor operating revenues	163.2	179.6	164.6	180.9	191.1	203.7	223.1	239.1	271.6	312.3
6. Less elimination of TVA sales to Federal agencies, Inter-divisional and Distributors	(202.8)	(195.8)	(186.8)	(197.7)	(203.1)	(202.3)	(213.4)	(221.7)	(222.2)	(245.2)
7. Combined net revenue base	196.1	217.3	215.3	225.6	236.3	253.5	278.5	303.8	345.4	393.9
8. Combined payments/combined revenue base--percent	6.3	6.4	6.9	7.2	7.4	7.3	7.3	7.5	7.3	7.2

Sources: Various TVA reports and records.

TABLE NO. TVA-3

STATE AND LOCAL TAXES PAID AS A PERCENT OF ELECTRIC OPERATING REVENUES
PRIVATE ELECTRIC UTILITIES
TVA STATES 1957, 1962 AND 1966

		1957			1962			1966		
State	Company	Operating Revenue ($000)	Taxes Other Than Income ($000)	Taxes Other Than Inc. As % of Operating Revenue (%)	Operating Revenue ($000)	Taxes Other Than Income ($000)	Taxes Other Than Inc. As % of Operating Revenue (%)	Operating Revenue ($000)	Taxes Other Than Income ($000)	Taxes Other Than Inc. As % of Operating Revenue (%)
Ala.	Alabama Power Co.	$ 98,628	7,154	7.3	144,615	10,366	7.2	$ 180,015	13,596	7.6
Ga.	Georgia Power Co.	124,148	8,078	6.5	174,427	10,415	6.0	243,075	15,243	6.3
Ill.	Central Ill.Pub.Serv.Co.	47,570	3,472	7.3	61,051	4,675	7.7	74,274	6,819	9.2
	Union Elec. Co. of Mo.	111,981	10,894	9.7	151,896	16,756	11.0	203,862	22,833	11.2
Ky.	Kentucky Utilities Co.	37,396	2,298	6.1	50,329	2,128	4.2	60,088	1,846	3.1
Miss.	Mississippi Power Co.	17,863	1,991	11.1	29,610	2,615	8.8	39,791	3,730	9.4
N.C.	Carolina Power & Light	66,998	7,200	10.7	96,246	8,971	9.3	134,892	12,216	9.1
	Duke Power Co.	134,440	14,300	10.6	189,677	17,517	9.2	258,695	23,237	9.0
Tenn.	Kingsport Power Co.	4,196	245	5.8	5,787	434	7.5	7,957	563	7.1
Va.	Appalachian Power Co.	101,629	8,850	8.7	126,109	12,428	9.9	146,939	15,251	10.4
	Total all companies	$ 744,849	$64,482	8.7	$1,029,747	86,305	8.4	1,349,588	115,334	8.5

Source: Electric Utility Companies' Annual Reports (Form 1) to the Federal Power Commission, 1957, 1962, 1966.

4. DATA REFORMS

One of the principal difficulties in the conduct of this study resulted from the nonavailability of data which reflect the totality of economic activity upon the various types of Federal lands and as manifested by the various Federal land management programs. The purpose of this appendix is to identify some of the critical data needs which in the future would facilitate the evaluation and updating of governmental policies and provide fundamental information for the analysis of land management practices in terms of the interaction between resource inputs (expenditures) and economic output (revenues and other quantifiable values).

One of the major accomplishments and products of this study is the compilation of the data bank reflecting 10 years of revenue sharing and payments in lieu of taxes activities upon all Federal lands. The full scope of this data bank is described in Part 2, Chapter 2 of this report.1/

The data bank should be kept current in a central location and it should be expanded both in terms of the data included and programs for analytical processes. A first priority for additional data inputs should be given to a federal land inventory reflecting the following factors relating to Federally owned land in a county or district of a county: land location (tract number or other type of locational identification); class or type of land; current utilization; appraised or otherwise established value (using original acquisition costs only if necessary); agency having prime responsibility; past and present resource expenditures; rationale or long-term plan for utilization; and, finally, any significant demographic data on the identified tract or combination of tracts within a county.

A considerable portion of the necessary inputs for the data bank exist, but are not readily accessible. After several years, it becomes even less accessible as records are put into Federal storage centers. The summary information now available on lands owned by the Federal government and published each year by the General Services Administration in their Inventory Report on Real Property Owned by the United States Throughout the World is based on reports prepared by each agency having jurisdiction over the lands, in most instances by installation. In 1966, in the United States, 19,973 installations were reported, and these might well provide the basis for the Federal land inventory data bank. The necessary additional information indicated in the preceding paragraph could be provided at the time of initial preparation of the installation reports. When prepared, they should clearly delineate the property within each county or specified district wherever the installation is located in more than a single county.

1/ The description of the data bank's technical setup, the relating computer programs and file formats have been described and documented in a separate report.

The extensiveness of the data involved would make a continually updated information system prohibitively expensive. It seems feasible, however, to develop the land inventory data by county on a semiannual basis. This would be a vast improvement over the present annual basis that provides only a limited amount of data by state and agency.

It might be added that Clawson and Held[1/] have stated "When one considers Federal land in total, the scarcity of data ... is aggravated by a total lack of coordination between agencies." Referring to the need for a consolidated balance sheet reflecting the revenues and expenditures, the authors noted "no single land administering agency could do it, and there is no force encouraging the agencies to do so cooperatively."

Though since the time Clawson and Held made their observations significant improvements in data management have been made -- thanks to the availability and the improved knowledge in the uses of high capacity computers -- the data needed, as stated herein, cannot be found. Concurrently with the establishment of a more extensive national data bank, potentially within the framework of the national Federal information system, should be the development of analytical cost-effectiveness programs to facilitate studies in at least two major areas. These are (1) the identification of Federal program costs and their resulting short and long-term benefits, and (2) the appraisal of the impact of Federal land management programs upon state and local government finances. Recognizing that, under multiple land management practices, the benefits from Federal land management programs have different characteristics -- some being the market values on timber, forage and minerals, and others being conservation values such as the protection of scenic beauty and other esthetic considerations -- it is necessary to develop value coefficients which will permit cost-benefit analysis comprising the entire gamut of inputs and outputs. Similarly, in the appraisal of the impact of Federal land management programs on state and local government finances, it is not sufficient merely to measure the financial burdens and benefits. It is also necessary to relate them to the level and quality of services which pertain to and determine the extent to which the services are affected by the presence of Federal lands.

To facilitate these studies, it is apparent that Federal land inventory data should be used by the various land management agencies in connection with their Planning Programming Budget System (PPBS) work. That is to say, the analysis which Federal departments and bureaus have begun to undertake -- in order to meet the requirements of the President's Executive order directing all government agencies to develop programs assuring the maximum economic efficiency consistent with their overall missions -- should be conducted, to the greatest extent possible, with the use of consistent interagency data. For example, cost efficiency studies on the development of timber resources should not be based exclusively on the data compiled by and available to the

---

1/ Marion Clawson and Burnell Held, The Federal Lands - Their Use and Management. (Lincoln, Nebraska, 1957: University of Nebraska Press).

26

Forest Service, Department of Agriculture. The studies should also incorporate experience and information obtainable from all other agencies which have been active in timber resource development, namely, the Bureau of Land Management, the Bureau of Sport Fisheries and Wildlife, the National Park Service, and others.

Variations in cost records represent a current problem of some magnitude because agency practices are not uniform. In the discussion of Alternative No. 2, the need for cost records, disaggregated by land type and land utilization, was pointed out. This type of accounting information could be an integral part of the internal record-keeping systems for each of the land management agencies. An adequate cost accounting system (adequate in terms explained in Alternative No. 2) might be designed and developed in a consistent manner for all land management agencies. Then the data which are readily comparable for like management programs conducted by different agencies as well as unlike programs would be available for such special studies as might be needed from time to time in the interest of reevaluating Federal land management missions in the light of changing socioeconomic conditions, changing domestic and world demands for products from the public lands and, not to be overlooked, national defense considerations.

The specific data needs for a Federal land data bank will depend in large measure upon the PILT and/or RS programs which exist and modifications or new programs which might be adopted by Congress from time to time. In Alternatives No. 1 and 2, new methods were described and their features are indicative of new data needs should either of these alternative systems be adopted. In both cases, a national data bank rather than a limited agency-by-agency data bank is indicated. Even if these alternatives were not to be adopted, it is evident from the research conducted during this study and specifically the numerous contacts with Federal, state and local governmental agencies, that a single national source of comprehensive data would be of great value to Federal, state and local governmental agencies While each governmental unit charged with specific responsibiliities undoubtedly will wish to maintain its own information system for operational purposes, the additional costs involved in the creation and maintenance of a national data system would in all likelihood be relatively small and the resulting benefits would greatly exceed the incremental costs. Likewise, it is quite likely that the establishment of an interagency data bank would permit the discontinuation of the publication of certain agency statistics inasmuch as the outputs from the national information source could provide the various and many interested parties with the needed information, but on a basis which is consistent and readily comparable between the various management agencies and their different management programs.

Although outside the direct responsibility and concern of the Federal government, the great deficiency of accurate and readily available data at state and local governmental levels should be considered. Generally speaking, states and counties presently do not routinely collect information enabling them to evaluate the impact of Federal lands within their jurisdictions. In the many appearances of state and local governmental witnesses before the

PLLRC, and specifically on the subject of PILT and RS, little, if any, statistical data were furnished in support of their various stated contentions. During the case study surveys conducted within the framework of this study, it was also observed that counties are not taxing possessory interests upon Federal lands because they lacked knowledge of the existence of such interests. While the Federal government has done much to assist states and local governments to establish useful information systems, unsatisfied needs persist in areas other than property records. One such important area is the summation of financial activities by various units of government within the geography of counties. Typically, in public land intense counties there does not exist a data source reflecting, for example, all tax collections by all units of government within the county. In the absence of such a source, the measurement of the impact of public land upon the county is extremely difficult if not impossible. Contrarily, in most states, financial data organized by type of activity or type of governmental unit, e.g. school districts, conservancy districts, towns, etc., are available. Consequently, it would be a relatively small additional task to provide summary financial and demographic data for all of the activities within any county. The additional effort needed is comparable to the cross-indexing of library records. Currently the typically available information from states by type of governmental unit can be compared with the author index. Needed is the subject index which combines in compatible format the data from all authors on a county or multiples of counties subject. The next step, somewhat beyond the immediate concern of the public lands subject, is the need to attain compatibility in the data collected and furnished by the different states. Not only is this a serious problem in any study dealing with the economies, budgets, revenues, expenditures, etc. of more than one state, but rarely are the state data furnished to central Federal agencies comparable with those published by the states themselves. Finally, states must be encouraged -- if they are to provide useful information -- to accumulate data specifically relating to their activities due to the presence of public lands. As pointed out in the various state study digests contained in Appendix No. 3 of this report state governments, for the most part are neither in the position to identify what financial burdens are incurred by them because of the public services they (and their local units) are rendering to the public lands nor have they sensed any reason for the segregation and accumulation of appropriate data. Here again, the additional costs which might be incurred at the state level for the origination and accumulation of the appropriate data are likely to be negligible. The benefits to the states and the Federal government would be far greater. These benefits would be the ability to more accurately measure the financial impact upon states and, in turn, the consideration of land management policies and Federal legislation in an enlightened, fact-supported manner.